ASSEMBLY COMMITTEE ON PUBLIC SAFETY

PUBLIC SAFETY 2005

CREATING A SAFER CALIFORNIA

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ANIMAL ABUSE

Animal Abuse: Euthanasia

Existing law makes it a crime to engage in acts of animal abuse and makes it a misdemeanor to kill any animal by the use of carbon monoxide gas. Existing law does not address killing a conscious animal by using an intracardiac injection of a euthanasia agent.

Intracardiac administration of a euthanasia agent on a conscious animal involves injecting a large needle directly into the heart of that animal and can be dangerous to the person administering the shot. The animal often struggles, making it difficult to administer the shot correctly and the animal may have to be injected multiple times.

AB 1426 (Liu), Chapter 352, makes it a misdemeanor to kill any conscious animal by means of an intracardiac injection of a euthanasia agent. Specifically, this new law:

- States that no person shall kill any conscious animal by means of intracardiac injection of a euthanasia agent unless the animal is heavily sedated or anesthetized in a humane manner, or comatose, except as specified.

- Provides that with respect to killing a dog or a cat, no person shall use carbon monoxide gas, intracardiac injection of a euthanasia agent, a high-altitude decompression chamber, or nitrogen gas.

BACKGROUND CHECKS

Criminal Information Search

Existing law states that the Attorney General shall furnish state summary criminal history information to any of the following if needed in the course of their duties provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, as specified.

AB 1517 (Runner), Chapter 339, authorizes the Department of Managed Health Care (DMHC) to require fingerprint images and associates information from an employee, prospective employee, contractors, subcontractors and employees of contractors whose duties include or would include access to confidential information including, but not limited to, social security numbers, medical information and any other information that is protected by state or federal law if that person's duties include access to medical information. Specifically, this new law:

- States that the fingerprint images and associated information of an employee or prospective employee of DMHC whose duties include or would include employees or

prospective employees, or any person who assumes those duties, may be furnished to the Department of Justice (DOJ) for the purpose of obtaining information as to the existence and nature of a record of state or federal level convictions and state or federal level arrests for which the DOJ establishes that the applicant was released on bail or on his or her own recognizance pending trial. Requests for federal level criminal offender record information received by DOJ pursuant to this new law shall be forwarded to the Federal Bureau of Investigation by DOJ.

- Provides that DOJ shall provide criminal information backgrounds to the DMHC pursuant to DOJ's authority under existing law.

- States that the DMHC shall request subsequent arrest notification from the DOJ as provided by law for all employees, prospective employees and those who assume those duties.

- Provides that the DOJ may assess a fee to process these requests, as required by law, and that this new law does not apply to individuals appointed to the DMHC prior to January 1, 2006.

- Allows the DMHC to investigate the criminal history of a person applying for employment in order to make a final determination of that person's fitness to perform duties, as specified, but the DMHC may only investigate the criminal history for crimes involving moral turpitude.

- Requires that any services contract or interagency agreement that may include review of medical records for compliance with the Knox-Keene Health Care Service Plan Act of 1975 and entered into after January 1, 2006 include a provision requiring the contractor to agree to permit DMHC to request criminal background checks on its employees, contractors, or subcontractors who will have access to this information.

BAIL

Continuing Education of Bail Licensees

Existing law regulates the bail industry pursuant to law and regulations of the State Insurance Commissioner. Areas regulated include the licensing of bail agents and the mandatory continuing education requirements for bail licensees. Bail licensees are required to complete not less than six hours of continuing classroom education in specified subjects, including the rights of the accused, ethics, and apprehension of bail fugitives; this training must be completed annually prior to the renewal of a bail license.

AB 404 (Leno), Chapter 389, allows bail licensees to complete their specified continuing education requirements through Internet courses or correspondence instruction. Specifically, this new law:

- Requires that successful completion of an Internet or correspondence course shall require a passing grade of at least 70 percent on a written, final examination.

- Prohibits an Internet or correspondence continuing education course from being provided prior to April 1, 2006.

- Allows an approved continuing education instruction provider to advertise or promote an Internet or correspondence course prior to April 1, 2006.

- Requires education providers to maintain records of their requests for consultation with, and any responses from, specified law enforcement agencies.

- Provides that the 90-day period for the Insurance Commissioner to approve or disapprove an application to provide education for bail licensure commences on receipt of the applicant's full and complete application.

- States that the Insurance Commissioner's failure to disapprove an application within this 90-day period shall result in automatic approval of the application.

- Provides that the approval shall be valid for two years.

CHILD ABUSE

Child Abuse or Neglect: Mandated Reports

Under existing law, a mandated reporter who observes or reasonably suspects a child is a victim of child abuse is required to immediately report the incident by telephone to a law enforcement or child welfare agency. Further, the child welfare agency receiving the report is required to forward the report of suspected child abuse to the law enforcement having jurisdiction over the case. These reports are allowed to be transmitted by telephone, fax, or electronic transmission.

AB 299 (Maze), Chapter 42, allows a mandated reporter who observes or reasonably suspects a child is a victim of child abuse to make a follow-up report to specified agencies by fax or electronic transmission, and clarifies that the initial report of suspected abuse must be made by telephone.

Child Abuse and Neglect Reporting Law

Existing law requires that any mandated reporter who has knowledge of, or observes, a child in his or her professional capacity or within the scope of his or her employment whom he or she knows, or reasonably suspects, has been the victim of child abuse shall report that incident immediately to a specified child protection agency by telephone, and requires a written report be sent within 36 hours.

AB 776 (Chu), Chapter 713, requires specified law enforcement agencies and county welfare departments that receive reports of suspected child abuse and neglect to keep a record of all reports received. Specifically, this new law:

- Requires specified law enforcement agencies and county welfare departments that receive reports of suspected child abuse and neglect to keep a record of all reports received, and prohibits these agencies from refusing to accept a report.

- Provides that if after reasonable efforts have been made a mandated reporter is unable to make an initial report by telephone, he or she shall by fax or electronic transmission make a one-time automated written report and be available to respond to a follow-up call by the agency with which the report was filed.

- Provides that the one-time automated written report shall be clearly identifiable so that it is not mistaken for a standard written follow-up report.

- Adds a sunset date of January 1, 2009 on the provision that requires a one-time automated report if a mandated reporter is unable to make an initial telephone report.

- Requires the Department of Social Services on the inoperative date of the one-time report provision to submit a report to the counties and the Legislature that reflects the data collected as to why the one-time report was filed in lieu of the initial phone call.

- Allows written reports of suspected child abuse or neglect to be made via facsimile or electronic transmission.

Child Abuse: Mandated Reporters

Under existing law if a mandated reporter of child abuse fails to make a report of suspected child abuse or neglect, the offense is punishable by up to six months in the county jail or by a fine not to exceed $1,000. However, if a supervisor or administrator impedes the reporting duties of a mandated reporter, the offense is an infraction punishable by a fine not to exceed $5,000. These inconsistencies should be addressed.

AB 1188 (Wolk), Chapter 163, increases the penalty from an infraction to a misdemeanor punishable by up to one year in the county jail; by a fine not to exceed $1,000; or both for a supervisor or administrator to impede or inhibit a mandated reporter from reporting an instance of known or reasonably suspected child abuse.

Child Sexual Abuse

There are a number of serious concerns expressed by the child victims of sexual abuse, particularly when the abuser is a member of the victim's family. Existing law contains the "one-strike" sex crime sentencing law that provides sentences of 15-years or 25-years-to-life in certain sex crimes if specified circumstances in aggravation are found to be true. However, existing law

also provides limited exceptions to the one-strike sex law for certain persons convicted of specified intra-familial child molestation offenses.

Existing law provides that such persons may be granted probation if the court makes all of the following findings: (1) the defendant is the victim's parent, or member of the victim's household or relative; (2) probation for the defendant is in the best interests of the child; (3) rehabilitation is feasible and the defendant is placed in a recognized treatment program immediately after the grant of probation; (4) the defendant is removed from the household of the victim until the court determines that the best interests of the child would be served by returning the defendant to that household; and, (5) there is no threat of physical harm to the child victim if probation is granted.

Under existing law, prosecutors may seek deferred entry of judgment and treatment in child sexual abuse cases rather than pursuing criminal prosecution. In addition, under existing law, victims of child sexual abuse by family members have complained about being forced to attend counseling with offenders.

SB 33 (Battin), Chapter 477, changes the definition of "incest" and limits the granting of probation in sentencing in a case of child molestation and continuous sexual abuse of a child, as specified. Specifically, this new law:

- Changes the definition of "incest" and further defines the crime of "incest" to include related persons who are 14 years of age or older who commit fornication or adultery with each other.

- Limits provisions of existing law that allow prosecutors to seek deferred entry of judgment and referral to counseling in lieu of criminal prosecution in any case involving a minor victim to cases of physical abuse or neglect.

- Limits the court's ability to grant probation to a person convicted of child molestation or continuous sexual abuse of a child.

- States that probation shall not be granted to any person convicted of committing these offenses if the existence of any fact required to prove the allegation is alleged in the accusatory pleading and either admitted by the defendant or found to be true by the trier of fact.

- Provides that if a person is convicted of child molestation or continuous sexual abuse of a child and the probation ineligibility factors are not pled or proven, probation may only be granted if the following terms and conditions are met:

    - If the defendant is a member of the victim's household, the court finds probation is in the best interest of the child victim;

    - The court finds that rehabilitation of the defendant is feasible, the defendant is amenable to treatment, and the defendant is placed in a recognized treatment program designed to deal with child molestation immediately after the grant of

probation or imposition of sentence;

- If the defendant is a member of the victim's household, the defendant must be removed from the household and contact between the defendant and victim prohibited except as narrowly permitted and with the agreement of the victim; and,

- The court finds there is no threat of physical harm to the victim if probation is granted.

- Requires the court to state on the record its reasons for whatever sentence the court imposes.

- States that no victim shall be compelled to participate in a program or counseling, and no program may condition a defendant's enrollment on participation by the victim.

- Requires that recognized treatment programs include specified components, including substantial expertise in the treatment of child abuse; a treatment regimen designed to specifically address the offense; the ability to serve indigent clients; and adequate and specified reporting requirements to the probation department and to the court.

Child Victims' Testimony

When a serious crime is alleged to have been committed against a young child, most often the child is able to testify in court without any difficulty. However, in some cases where the child is asked to testify against his or her alleged abuser, the experience is so intimidating that he or she is unwilling or unable to do so when the defendant is located in the same room.

Under existing law, a court may allow a minor age 13 years or under whose testimony will be that her or she was the victim of a violent felony or sexual abuse to testify by closed-circuit television if the court finds that one of four specific factors will so impact the minor as to make he or she unavailable to testify: (1) threats of serious bodily injury to be inflicted on the minor or a family member, threats of deportation or incarceration of the minor or a family member, threats to remove the child from the home or dissolution of the family, which were made in an attempt to dissuade the minor from testifying; (2) use of a deadly weapon in the commission of the offense; (3) infliction of great bodily injury in the commission of the offense; or, (4) conduct on the part of defense counsel or the defendant during the hearing or trial that causes the minor to be unable to continue his or her testimony.

However, in many cases of child abuse - although none of the four specific factors required under current law are present, the child-witness is, nonetheless, too intimidated to testify in the immediate presence of his or her alleged abuser and without the child's testimony the charges often must be dismissed.

SB 138 (Maldonado), Chapter 480, expands the provisions for closed-circuit testimony by a child under the age of 13 years by allowing those same alternative procedures to be

used in cases alleging felony child abuse against the minor. This new law also adds to the list of enumerated circumstances under which closed-circuit testimony may be allowed to include whenever, "Testimony by the minor in the presence of the defendant would result in the child suffering emotional distress so that the child would be unavailable as a witness." Therefore, under this new law, as opposed to requiring that the impact on the child witness be attributable to a specific factor - such as use of a deadly weapon in the commission of the offense - a general finding that the child-witness will suffer emotional distress by testifying in the defendant's presence to such a degree that the minor would be unable to testify will be sufficient to allow the minor to testify by closed-circuit television.

COMPUTER CRIMES

Child Luring

The proliferation of the Internet has caused child predators to move from the playground to the World Wide Web in search of unsuspecting children. Children now encounter ever-increasing dangers and parents, in turn, face a growing challenge to protect their children. Due to greater access to the Internet and a stronger sense of independence, teenagers are the most frequently targeted population for predatory luring.

AB 33 (Runner), Chapter 461, increases the age of a minor, for the purpose of the child luring provisions, from 12 years of age or under to 14 years of age or under, and adds the crime of "child luring" to the list of crimes which makes a computer used in the commission of the offense subject to forfeiture.

Sexual Assault Medical Examinations

Existing law requires health practitioners, as defined, who provide medical services to certain persons to immediately make a report to a local law enforcement agency that contains certain personal and medical information, including persons suffering from an injury inflicted by a firearm, and persons suffering from an injury inflicted as the result of assaultive or abusive conduct.

AB 998 (Chu), Chapter 133, requires a health practitioner to make a report to law enforcement upon providing medical services to a person in the custody of law enforcement when sought in the course of a sexual assault investigation. Specifically, this new law:

- Authorizes any health practitioner employed in any health facility, clinic, physician’s office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, performs a forensic medical examination on any person in the custody of law enforcement from whom evidence is sought in connection with the commission and investigation

of a crime of sexual assault, as specified, prepare a written report on a standard form and immediately provide the report or a copy of the report to the law enforcement agency who has custody of the individual examined.

- Provides that no health practitioner shall be required to perform forensic medical examinations as part of his or her duties unless he or she is part of an agency that specifically contracts with law enforcement to perform certain duties.

- States the examination and report is subject to confidentiality requirements of the Medical Information Act.

- States the report shall be released upon request, oral or written, to any person or agency involved in any related investigation and prosecution of a criminal case including, but not limited to, a law enforcement officer, district attorney, city attorney, crime laboratory, county licensing agency, and coroner. The report may be released to defense counsel or another third party only through discovery of documents in the possession of a prosecuting agency or following the issuance of a lawful court order authorizing the release of the report.

- Provides that a health practitioner who makes this report will not incur civil or criminal liability.

- States that refusal to comply will not be considered failure to report and not subject to criminal penalty.

Public Officials: Personal Information

Prompted by several incidents involving threats to judges, AB 2238 (Dickerson), Chapter 621, Statutes of 2002, prohibited the intentional posting of home addresses or telephone numbers of elected or appointed officials with the intent to cause imminent great bodily injury, as well as publishing residence addresses of law enforcement officers in retaliation for the due administration of the law. AB 2238 also created the Public Safety Officials' Home Protection Act Advisory Task Force, chaired by the Attorney General and comprised of representatives of public safety entities, the judiciary, state and local government, and the real estate and business community.

AB 1595 (Evans), Chapter 343, allows for specified elected or appointed officials to obtain an injunction against any person or entity that publicly posts on the Internet the home address or telephone number of that official, and allows for damages if this disclosure was made with intent to cause bodily harm. Specifically, this new law:

- Provides that any elected or appointed official whose home address or telephone number is made public on the Internet after the official has made a written demand that the information not be made public may bring a lawsuit against the person, business or association responsible and may be granted injunctive or declaratory

relief as well as fees and costs.

- Provides that any person, business or association that solicits, sells, or trades on the Internet the home address or telephone number of specified elected or appointed officials with the intent to cause imminent great bodily harm to the official or any resident of the official's home address shall be liable for civil damages of up to three times the actual damages but in no case less than $4,000.

- Provides that a written demand made by any qualifying public official not to publicly post his or her home address or telephone number shall be effective for four years regardless of whether or not the official's term has expired prior to the end of the four-year period.

- Provides that the written demand not to publicly post his or her home address or telephone number when made by a state constitutional officer, a mayor, or a member of the Legislature, a city council or a board of supervisors shall include a statement describing a threat or fear for the safety of that official or a resident of that official's home address.

- Exempts from liability for this violation an interactive computer service or access software provider, as defined, unless the service or provider intends to aid and abet or cause imminent great bodily harm that is likely to occur or threatens to cause imminent great bodily harm to an elected or appointed official.

CONTROLLED SUBSTANCES

The Drug Dealer Liability Act

Under existing law, "The Drug Dealer Liability Act", a person who knowingly participates in the marketing of illegal controlled substances is liable for civil damages. Existing law defines the "marketing of illegal controlled substances" as the possession for sale, sale, or distribution of a specified illegal controlled substance.

AB 275 (Baca), Chapter 88, revises the Drug Dealer Liability Act to include the manufacture of a controlled substance. Specifically, AB 275:

- States that this new law serves to clarify that the manufacturing of an illegal controlled substance is included in the definition of "marketing of illegal controlled substances" and in the definition of "participate in the marketing of illegal controlled substances."

- These clarifications do not constitute changes in, but are declaratory of, existing law.

Regulating Chemicals Used in Controlled Substances

Health and Safety Code Section 1107.1 provides some limitations on the sale of iodine crystals, but does not apply to the sale of iodine tincture or other liquid solutions containing iodine. As a result, a person can easily buy large quantities of these solutions, which can then be converted into iodine crystals and used to manufacture methamphetamine.

> **AB 465 (Cogdill), Chapter 468,** adds iodine and tincture of iodine to the list of regulated chemicals for which transactions are to be reported to the Department of Justice.

Controlled Substances

The Controlled Substance Utilization Review and Evaluation System (CURES) program was established in 1997 by AB 3042 (Takasugi), Chapter 738, Statutes of 1996, in response to recommendations of the Controlled Substance Prescription Advisory Council established by SCR 74 in 1992. The purpose of CURES was to provide for the electronic monitoring of the prescribing and dispensing of Schedule II controlled substances. CURES provides for the electronic transmission of Schedule II prescription data to the Department of Justice (DOJ) at the time prescriptions are dispensed.

The Attorney General stated technical and administrative changes need to be made to existing law which remove inconsistencies within SB 151 (Burton), Chapter 406, Statutes of 2003, and provide that DOJ policy and practice will conform to the "best practices" model to prevent diversion of controlled substances.

> **SB 734 (Torlakson), Chapter 487,** makes various technical and clarifying changes to the Health and Safety Code pertaining to CURES.

CORRECTIONS

High-Risk Sex Offenders: Residency Restrictions

Under existing law, an inmate released on parole for any violation of child molestation or continuous sexual abuse of a child may not be placed or reside, for the duration of parole, within one-quarter mile of any school including any or all of Grades K-8, inclusive.

> **AB 113 (Cohn), Chapter 463**, prohibits an inmate released on parole for child molestation or continuous sexual abuse of a child and who the California Department of Corrections and Rehabilitation has determined poses a high risk to the public from being placed or residing, for the duration of parole, within one-half mile of any public or private school including any or all of Grades K-12, inclusive.

Inmate Hepatitis C Treatment and Testing

Thousands of untreated prisoners infected with Hepatitis C are released back into the community each year totally unaware of their disease, how to prevent its spread to others, and ignorant about available treatment options to help forestall liver failure. In prisons, undiagnosed and untreated prisoners put themselves at risk, as well as other prisoners and corrections staff who may be infected through blood exposure during altercations or when assaulted with blood, feces or urine. Free and confidential testing is the first line of defense against the epidemic. Encouraging prisoners to be screened for Hepatitis C will allow for targeted educational interventions to reduce the likelihood of infecting others and also reduce the risk of prisoners developing chronic liver disease, which is expensive to treat and sometimes fatal.

> **AB 296 (Negrete McLeod), Chapter 524,** provides that the California Department of Corrections and Rehabilitation shall provide inmates with information on Hepatitis C and free and confidential voluntary testing for Hepatitis C.

Correctional Facilities: Faith- and Morals-Based Programs

California's recidivism rate is one of the highest in the country. Faith- and morals-based programs may provide some inmates with the tools they need to survive when released from prison and prevent them from returning to prison. In a 1990 study, researchers found that prisoners who come under religious influence while in prison adapt better when released than those who lack religious influence. Prisoners who received religious instruction while in prison had a lower rate of recidivism after being freed than those who had no such instruction.

> **AB 324 (Mountjoy), Chapter 292,** enacts uncodified legislative findings and declarations that inmates in jails and other local detention facilities and prisoners benefit from participation in faith-based programs and morals-based programs, as well as education and rehabilitation programs and other secular programs.

Corrections: Pregnant Inmates

Existing law permits a pregnant inmate to be temporarily taken to a hospital outside the prison for the purposes of childbirth and provides for the care of any children so born until suitably placed. Under existing law, a pregnant inmate may be shackled during labor and delivery.

Existing law also permits the California Department of Corrections and Rehabilitation (CDCR) to limit dental services provided to pregnant inmates to those services that are necessary to meet basic needs including, but not limited to, treatment of injuries, acute infection, severe pain, or spontaneous bleeding, and repairs to dental prosthetic appliances.

> **AB 478 (Lieber), Chapter 608,** requires that pregnant inmates be transported to a hospital outside of the prison in the least restrictive way possible. It also establishes minimum nutritional and medical standards for pregnant inmates. Specifically, this new law:

- Provides that the pregnant inmate shall not be shackled by the wrists, ankles, or both during labor, including during transport to the hospital.

- Prohibits shackling the pregnant inmate during delivery, and while in recovery after giving birth, except if shackling is deemed necessary for the safety and security of the inmate, the staff, and the public.

- Requires any community treatment program in which an inmate participates to include prenatal care, access to prenatal vitamins, childbirth education, and infant care.

- Requires the CDCR to establish minimum guidelines for pregnant inmates not eligible to participate in community treatment programs regarding nutrition, vitamins, information and education, and a dental cleaning.

- Requires that a woman who is pregnant during her incarceration to have access to complete prenatal care including all of the following:

    - A balanced nutritious diet approved by a doctor;

    - Prenatal and postpartum information and health care, including access to necessary vitamins recommended by a doctor;

    - Information pertaining to childbirth education and infant care; and,

    - A dental cleaning while in a state facility.

- Requires the Corrections Standards Authority to establish minimum standards for state correctional facilities by January 1, 2007. This new law requires that the Authority, in establishing minimum standards, seek the advice of the Department of Health Services, physicians, psychiatrists, local public health officials and other interested persons.

- Provides that a juvenile ward in the custody of the CDCR has the same rights to prenatal care, education, and rights to be free from shackling during labor, delivery and recovery.

Correctional Institutions: Sexual Abuse

The Federal Government addressed the issue of sexual abuse in detention with the Prison Rape Elimination Act of 2003. Prisoner rape occurs in almost every detention facility at the local, state, and federal levels. Sexual abuse in a correctional setting harms inmates and wards physically and psychologically and undermines the potential for their successful community reintegration. Any and all forms of rape cause serious physical and psychological damage, which can lead to long-term effects such as substance abuse, self-hatred, depression, post-traumatic stress, rape-trauma syndrome and even suicide.

AB 550 (Goldberg), Chapter 303, establishes the Sexual Abuse in Detention Elimination Act to protect all inmates and wards from sexual abuse while held in institutions operated by the California Department of Corrections and Rehabilitation (CDCR); requires CDCR to review the handbook regarding sexual abuse; requires CDCR to develop specified policies, practices, and protocols when placing inmates; creates the Office of the Sexual Abuse in Detention Elimination Ombudsperson; and requires CDCR to develop guidelines for allowing outside organizations and service agencies to provide resources and counseling to inmates and wards.

Parole: Religious Counseling

California leads the nation with the highest rate of parolee failure. Seventy-nine percent of California's parolees fail to meet the conditions of their parole. The cost of re-incarcerating failed parolees is $900 million annually. While it costs $78 per day to house an inmate, it costs only $8 per day to supervise a parolee. Inmate involvement in religious programs is attributed to reducing disciplinary problems by more than 40 percent. For every $1 spent on providing rehabilitative services, including prison ministries, there is an average of $2 return in reduced corrections costs. Religious advisors assume a quasi-mentoring role for parolees, which is similar to that of mentors and juvenile offenders.

AB 627 (Leslie), Chapter 306, provides that a California Department of Corrections and Rehabilitation departmental or volunteer chaplain, who has ministered to or advised an inmate, may continue to do so when the inmate is paroled as long as the departmental or volunteer chaplain notifies the warden and the parolee's agent in writing.

Criminal Investigations

Under existing law, a city, county or superior court is entitled to reimbursement for reasonable and necessary costs connected with state prisons or prisoners in connection with any crime committed at a state prison, whether by a prisoner, employee, or other person, including any crime committed by the prisoner while detained in local facilities pursuant to an agreement with the city or county. Such costs include costs of the prosecuting attorney and public defender or court-appointed attorney in investigating and prosecuting cases related to crimes by a state prison inmate.

AB 663 (La Suer), Chapter 54, reimburses cities or counties for costs incurred for providing training in the investigation or prosecution of crimes by state prison inmates.

Attempted Murder of a Custodial Officer

Existing law provides that an attempt to commit willful, deliberate, and premeditated murder, as defined, is punishable by imprisonment in the state prison for life with the possibility of parole. Existing law further provides that an attempted murder of a peace officer or firefighter, as defined, committed under specified circumstances is punishable by imprisonment in the state prison for life with the possibility of parole or by 15-years-to-life if it is also proven that the attempt was willful, deliberate, and premeditated.

AB 999 (La Malfa), Chapter 52, provides that the elements defining the crime of attempted murder of a police officer or firefighter, and the penalties, also apply to the attempted murder of a custodial officer.

Inmate Healthcare: Reimbursement for Emergency Services

SB 1102 (Committee on Budget and Fiscal Review), Chapter 227, Statutes of 2004, enacted provisions allowing the California Department of Corrections and Rehabilitation (CDCR) and the Division of Juvenile Justice to control their inmate population health care costs. SB 1102 stated that if contracts for reasonable rates could not be negotiated, CDCR or the Division of Juvenile Justice would not pay greater than standard Medicare rates for inmate health care costs. However, SB 1102 did not address county jails.

SB 159 (Runner), Chapter 481, provides that county sheriffs, chiefs of police, and directors or administrators of local departments of correction may contract with providers of health care services, and provides for reimbursement rates of 110 percent of the hospital's actual costs if no contract exists. This new law prohibits local sheriff or police from releasing inmates from custody for the purpose of seeking medical care with the intent to re-arrest unless the hospital determines the action would enable it to collect from a third-party source. This new law creates a working group to identify and resolve industry issues that create fiscal barriers to timely and affordable emergency inmate health care.

Inter-Agency Agreements

Existing law provides that if a court finds a defendant to be a sexually violent predator (SVP), that person is committed to the Department of Mental Health (DMH) for two years of treatment, with additional two-year commitments upon successful new petition proceedings. Existing law also requires evaluation by two specified mental health professionals according to protocols established by DMH, and requires the evaluation to be completed at least six months prior to release from custody unless the California Department of Corrections and Rehabilitation (CDCR) received the inmate with less than nine months to serve, or a court or administrative action modified the inmate's sentence.

SB 383 (Maldonado), Chapter 137, allows the DMH to enter into an inter-agency agreement with the CDCR and local law enforcement agencies for services related to supervising and monitoring SVPs conditionally released into the community. Specifically, this new law:

- Provides that the DMH may contract with the CDCR, as well as with local law enforcement, for specific monitoring and supervising functions, such as drug testing, location monitoring, or administration of lie detector tests.

- Provides the DMH with a cost-savings option when arranging for the monitoring of SVPs. This new law does not change the status of SVPs, nor remove DMH from its ultimate responsibility of monitoring SVPs.

Street Gangs

In enacting the Street Terrorism Enforcement and Prevention Act in 1988, California recognized that gangs were a major concern to the public and that their actions as a whole were detrimental to the public. Crimes listed in the Street Terrorism Enforcement and Prevention Act are subject to enhanced sentences if committed by gang members. In recent years, gangs have become increasingly more sophisticated and are using identity theft to help finance their criminal activities.

SB 444 (Ackerman), Chapter 482, expands the list of crimes that may be used to establish a "pattern of criminal gang activity" to include felony theft of an access card or account information; counterfeiting, designing, using, or attempting to use an access card; felony fraudulent use of an access card or account information; unlawful use of personal identifying information to obtain credit, goods, services, or medical information, and wrongfully obtaining Department of Motor Vehicles documentation.

Offender Access to Personal Information

Current law prohibits convicted adults and adjudicated minors (i.e., minors found by the juvenile court to be delinquent) from being employed to "perform any function that provides access to personal information of private individuals," as specified, if they have been convicted of an offense involving forgery or fraud, misuse of a computer, misuse of another person's personal or financial information, or a registerable sex offense. This loophole allows for the possibility of some convicted adults and adjudicated minors to have access to personal information of private individuals.

SB 460 (Margett), Chapter 259, precludes any offender confided in a county facility or the California Department of Corrections and Rehabilitation from gaining access to personal information.

Prisoner Risk and Needs Assessments

Currently, when a person is convicted of a felony, the county performs an assessment of that person's circumstances, including prior history and current needs. This assessment is performed on the county level and is utilized by the court to assess the individual’s specific needs. However, this information is not universally given to the Department of Corrections and Rehabilitation (CDCR) when the offender is transferred to the CDCR's custody. In many cases, the CDCR does not get a copy of the assessment and, therefore, cannot utilize its findings to facilitate the most appropriate placement of the individual; instead, CDCR performs its own assessment of the inmate.

Although the Legislature funds, and the law requires, the CDCR to implement educational and vocational programs, less than 40,000 of the 164,000 inmates are participating in educational or vocational programs (including re-entry classes). California spends more than $6 billion to house inmates rather than preparing them for their eventual return to society. Counties should be allowed to contract with the CDCR to assume the needs assessment function and make a recommendation to the CDCR for appropriate placement for convicted felons being transferred to CDCR's custody. By coordinating and streamlining the assessment process, the offender can be placed at the appropriate prison directly from county jail and begin obtaining services immediately rather than repeating the assessment process in the reception centers (which currently takes up to six months).

SB 618 (Speier), Chapter 603, enacts the following uncodified legislative findings and declarations:

- That the successful reintegration of parolees into society depends upon the proper assessment of the offenders' risks and needs prior to entry into the prison system and appropriate direction of offenders into facilities and programs available to address risks or needs.

- The Legislature recognizes that the transfer of the assessment function from the CDCR to the community in which an offender committed his or her crime and to which the offender will likely be paroled may represent an effective and efficient means to perform an assessment.

- The Legislature encourages the participation of CDCR and interested counties to develop and implement plans to transfer assessment functions to local probation departments and courts, with the goal of improving public safety in the community and to better enable parolees to become contributing members of society.

Additionally, this new law provides:

- That counties may develop a multi-agency plan to prepare and enhance nonviolent felony offenders' successful reentry into the community.

- The plan to be developed by, and have the concurrence of, the presiding judge, the chief probation officer, the district attorney, the local custodial agency, and the public defender, or their designees and submitted to the board of supervisors for approval.

- Provides that when a pre-sentence report prepared by the probation department recommends state prison commitment, the report shall also include, but not be limited to, the offenders' treatment, literacy, and vocational needs.

- Requires that any sentence imposed pursuant to this new law include a recommendation for completion while in state prison, of all relevant programs to address those needs identified in the assessment.

- Authorizes the CDCR to:
    - Enter into an agreement with a county or counties to implement the multi-agency plan.
    - Provide funding for the purpose of the probation department performing the assessment.
- Requires CDCR, to the extent feasible, provide to the offender all programs pursuant to the court's recommendation.

Continuous Electronic Monitoring

Under current law, there is reluctance by some local probation offices and the California Department of Corrections and Rehabilitation (CDCR) to use "continuous electronic monitoring" (CEM) on parolees and probationers. The reluctance stems from the lack of explicit statutory authority to use this tool, the existence of explicit authority to use home monitoring technology, and the existence of prior statutory authority authorizing a pilot project in three counties to test CEM

Despite the reluctance in California to use this technology, Florida has been using CEM for quite some time. In a study performed with approximately 64,000 offenders released from prisons and jails in Florida between 1996 to 2000, the Florida Department of Corrections concluded, "Community Offenders placed on Electronic Monitoring are significantly less likely to have a revocation of any type, have a revocation for a felony, have a revocation for a misdemeanor, have a revocation for technical reason, or to abscond within one or two years of being placed on supervision. This conclusion is based on results from multivariate models which measure the effect of CEM on outcome measures, controlling for a host of variables such as current offense, prior convictions, violations, and prison sentences, demographic characteristics of the offenders, and the judicial circuit of supervision."

If California were to experience the same reduction in recidivism as Florida by using CEM on probationers and parolees, the result would be substantial costs savings, reduced overpopulation in jails and prisons, and reduced crime.

SB 619 (Speier), Chapter 484, provides that a county probation department may use CEM (which may include GPS technology) to supervise persons on county probation, and authorizes the CDCR to utilize CEM to electronically monitor the whereabouts of parolees. Specifically, with regard to probation, this new law:

- Provides that a county probation department may use CEM (which may include GPS technology) to supervise persons on county probation.
- Provides that any use of CEM pursuant to this law shall have as its primary objective the enhancement of public safety by reducing the number of people victimized by

crimes committed by persons on probation.

- Enacts details of the use and effect of CEM, including that information about location may be used "as evidence to prove a violation of the terms of probation"; that a chief probation officer shall have the sole discretion to decide who shall be supervised using CEM by the probation department; and that persons supervised by CEM may be charged for the cost (after other fines, orders, and penalties have been satisfied). However, the department must waive those charges/fees upon a finding of an inability to pay.

With regard to the CDCR, this new law:

- Authorizes the CDCR to utilize CEM to electronically monitor the whereabouts of persons on parole.

- Provides that any person released on parole may be required to pay for that monitoring upon a finding of the ability to pay those costs. However, the CDCR shall waive any or all of that payment upon a finding of an inability to pay. The CDCR shall consider any remaining amounts the person has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the person pay for the CEM.

- Provides that the CDCR shall have the sole discretion to decide which persons shall be supervised by CEM.

With regard to legislative findings, this new law includes the following findings and declarations in relation to both probation and CDCR:

- Any use of CEM shall have as its primary objective the enhancement of public safety through the reduction in the number of people being victimized by crimes committed by persons on probation or parole.

- The Legislature intends in enacting this new law to specifically encourage a county probation department and the CDCR to utilize a system of CEM pursuant to this new law.

- The Legislature finds that because of its capability for continuous surveillance, CEM has been used in other parts of the country to monitor persons on formal probation and parole who are identified as requiring a high level of supervision and that CEM has proven to be an effective risk management tool for supervising high-risk persons on probation and parole who are likely to re-offend where prevention and knowledge of their whereabouts is a high priority for maintaining public safety.

- It is the intent of the Legislature that CEM established pursuant to this new law maintains the highest public confidence, credibility, and public safety.

Parole Revocation

As part of the Valdivia v. Schwartznegger settlement agreement, parolees facing revocation proceedings will be provided with defense counsel. The CDC should be allowed to provide the parolee's defense counsel with criminal offender record information, specifically the Criminal Identification and Investigation Report (the parolee's "rap sheet") as part of the parolee's due process rights.

> **SB 647 (Margett), Chapter 99**, allows a parolee or his or her attorney to receive a copy of his or her criminal history in a parole revocation or revocation extension hearing. SB 647 authorizes the Attorney General to release state summary criminal offender record information to a public defender or attorney representing a person in a parole revocation or parole revocation extension proceeding.

COURT HEARINGS AND PROCEDURES

Search Warrants

Penal Code Section 830.1(a) defines a "peace officer" as "any inspector or investigator employed in that capacity in the office of a district attorney". Existing law defines a "search warrant" as an order to a peace officer. However, existing law also states that a search warrant may only be served by a sheriff, marshal, or police officer. Thus, although district attorneys investigators are peace officers, they may not serve search warrants.

> **AB 182 (Benoit), Chapter 181,** allows any peace officer, including a district attorney investigator, to serve a search warrant rather than only a sheriff, marshal, or police officer.

The Drug Dealer Liability Act

Under existing law, "The Drug Dealer Liability Act", a person who knowingly participates in the marketing of illegal controlled substances is liable for civil damages. Existing law defines the "marketing of illegal controlled substances" as the possession for sale, sale, or distribution of a specified illegal controlled substance.

> **AB 275 (Baca), Chapter 88,** revises the Drug Dealer Liability Act to include the manufacture of a controlled substance. Specifically, AB 275:
>
> - States that this new law serves to clarify that the manufacturing of an illegal controlled substance is included in the definition of "marketing of illegal controlled substances" and in the definition of "participate in the marketing of illegal controlled substances."
>
> - These clarifications do not constitute changes in, but are declaratory of, existing law.

Criminal Procedure: Preliminary Hearing Testimony

Existing law authorizes a finding of probable cause to be based in whole or in part upon the sworn testimony of a law enforcement officer relating to statements of declarants made out of court offered for the truth of the matter asserted.

> **AB 557 (Karnette), Chapter 18,** extends that authorization to testify at a preliminary hearing to include an honorably retired peace officer as long as that officer is relating statements made when he or she was an active officer.

Preservation of Testimony

Under existing law when a defendant has been charged with any crime, he or she in all cases and the prosecution in cases other than those for which the punishment may be death, a court may conduct a conditional examination, which will be reduced to writing and may be preserved on video tape, when the witness is unavailable, as defined:

Preserving a witness' testimony is important when there is reason to believe the witness may not be available at the time of trial, particularly true in cases involving elder abuse. Trials are frequently delayed and a case may not go to trial for months or even years after it has been filed. If a victim dies, leaves California, or becomes too ill to participate in the criminal justice process, the result can be cases being dismissed and offenders getting away with abuse.

> **AB 620 (Negrete McLeod), Chapter 305,** lowers the age from 70 to 65 years of age as a ground for conducting a conditional examination of a witness to preserve his or her testimony in cases involving the commission of serious felonies. AB 620 also extends the right to defendants as well as the prosecution to request a conditional examination of a witness where there is evidence that the witness' life is in jeopardy.

Arrested Parents of Minor Children

Families, law enforcement, local governments, and community-based organizations must work together to ensure that minor children are provided for when a custodial parent is arrested or incarcerated.

> **AB 760 (Nava), Chapter 635**, requires that if, during the booking process, an arrested person is identified as a custodial parent with responsibility for a minor child, the arrested person shall be given two additional phone calls for the purpose of arranging for the care of the minor child or children, as specified.

Statute of Limitations

The United States Supreme Court has held that the statute of limitations reflects a legislative judgment that after a certain time no quantum of evidence is sufficient to convict. That judgment typically rests upon evidentiary concerns; for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable.

As the issue of child sexual abuse came increasingly to the national attention, some state legislatures, including California, enacted legislation that revived otherwise expired child sexual abuse cases. The statutes of limitations were extended retroactively to these old cases in recognition of the repressed memories of some victims or because victims have been afraid to come forward before the statute of limitations had expired.

However, the United States Supreme Court struck down these revival provisions as violative of the ex post facto clause of the United States Constitution. The Court stated that these laws deprived the defendant of fair warning that might have led him or her to preserve exculpatory evidence. The Court also commented that laws such as the revival laws raised a risk of arbitrary and potentially vindictive legislation.

In the 2003-04 Legislative Session, the California Legislature AB 1667 ((Kehoe), Chapter 368, Statutes of 2004, which repealed provisions relative to the statute of limitations on various sex offenses held unconstitutional by the United States Supreme Court (Chapter 368 Statutes of 2004.) However, due to technical problems, that law would have been unintentionally repealed as of March 1, 2005, leaving the unconstitutional provisions in place after that date.

SB 16 (Alquist), Chapter 2, implements technical corrections to the Penal Code section regarding the tolling and revival of expired statutes of limitations.. Specifically, this new law:

- States that existing law, effective until March 1, 2005, which deletes the unconstitutional provisions regarding the statute of limitations for specified sex offenses, remains in effect.

- Provides that statutory provisions regarding the revival of expired statutes of limitations, held unconstitutional by the United States Supreme Court and subsequently repealed by AB 1667 (Kehoe), Chapter 368, Statutes of 2004, remain repealed.

- Strikes all retroactive language in Penal Code Section 803 found by the United States Supreme Court to be unconstitutional in Stogner v. California (2003) 123 S. Ct. 2446.

- Adds violations of provisions relating to transactions involving a monetary instrument related to criminal activity (Penal Code Section 186.10) to those for which the commencement of the applicable statute of limitations commences only when the offense has been, or reasonably could have been discovered.

Child Sexual Abuse

There are a number of serious concerns expressed by the child victims of sexual abuse, particularly when the abuser is a member of the victim's family. Existing law contains the "one-strike" sex crime sentencing law that provides sentences of 15-years or 25-years-to-life in certain sex crimes if specified circumstances in aggravation are found to be true. However, existing law

also provides limited exceptions to the one-strike sex law for certain persons convicted of specified intra-familial child molestation offenses.

Existing law provides that such persons may be granted probation if the court makes all of the following findings: (1) the defendant is the victim's parent, or member of the victim's household or relative; (2) probation for the defendant is in the best interests of the child; (3) rehabilitation is feasible and the defendant is placed in a recognized treatment program immediately after the grant of probation; (4) the defendant is removed from the household of the victim until the court determines that the best interests of the child would be served by returning the defendant to that household; and, (5) there is no threat of physical harm to the child victim if probation is granted.

Under existing law, prosecutors may seek deferred entry of judgment and treatment in child sexual abuse cases rather than pursuing criminal prosecution. In addition, under existing law, victims of child sexual abuse by family members have complained about being forced to attend counseling with offenders.

SB 33 (Battin), Chapter 477, changes the definition of "incest" and limits the granting of probation in sentencing in a case of child molestation and continuous sexual abuse of a child, as specified. Specifically, this new law:

- Changes the definition of "incest" and further defines the crime of "incest" to include related persons who are 14 years of age or older who commit fornication or adultery with each other.

- Limits provisions of existing law that allow prosecutors to seek deferred entry of judgment and referral to counseling in lieu of criminal prosecution in any case involving a minor victim to cases of physical abuse or neglect.

- Limits the court's ability to grant probation to a person convicted of child molestation or continuous sexual abuse of a child.

- States that probation shall not be granted to any person convicted of committing these offenses if the existence of any fact required to prove the allegation is alleged in the accusatory pleading and either admitted by the defendant or found to be true by the trier of fact.

- Provides that if a person is convicted of child molestation or continuous sexual abuse of a child and the probation ineligibility factors are not pled or proven, probation may only be granted if the following terms and conditions are met:

    - If the defendant is a member of the victim's household, the court finds probation is in the best interest of the child victim;

    - The court finds that rehabilitation of the defendant is feasible, the defendant is amenable to treatment, and the defendant is placed in a

recognized treatment program designed to deal with child molestation immediately after the grant of probation or imposition of sentence;

- If the defendant is a member of the victim's household, the defendant must be removed from the household and contact between the defendant and victim prohibited except as narrowly permitted and with the agreement of the victim; and,

- The court finds there is no threat of physical harm to the victim if probation is granted.

- Requires the court to state on the record its reasons for whatever sentence the court imposes.

- States that no victim shall be compelled to participate in a program or counseling, and no program may condition a defendant's enrollment on participation by the victim.

- Requires that recognized treatment programs include specified components, including substantial expertise in the treatment of child abuse; a treatment regimen designed to specifically address the offense; the ability to serve indigent clients; and adequate and specified reporting requirements to the probation department and to the court.

Statute of Limitations: Sexual Abuse Cases

The statute of limitations reflects a legislative judgment that after a certain period of time, no quantum of evidence is sufficient to convict a criminal defendant. That judgment typically rests upon evidentiary concerns; for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable.

Examples of existing statutes of limitations include the following provisions: (1) prosecution for crimes punishable by imprisonment in the state prison for eight years or more must be commenced within six years after the commission of the offense; (2) prosecution for crimes punishable by imprisonment in the state prison must be commenced within three years after commission of the offense; (3) prosecution for specified offenses punishable by imprisonment in the state prison relating to fraud, breach of fiduciary duty, theft or embezzlement upon an elder or dependent adult, or official misconduct must be commenced within four years after discovery of the commission of the offense or within four years after the completion of the offense, whichever is later; and, (4) prosecution for specified felony sex offenses must be commenced within 10 years of the commission of the offense or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later, as specified.

There is strong scientific evidence that supports the concept that child sexual abuse is unique. Delayed reporting by child victims is well established. Extending the statute of limitations in child molestation cases gives the victims the opportunity to gain independence and the maturity they need to face their abusers.

SB 111 (Alquist), Chapter 479, extends the statute of limitation in specified sexual abuse cases from 10 years from the date of the crime to any time before the alleged victim's 28th birthday. Specifically, this new law provides that prosecution for specified sex offenses alleged to have been committed when the victim was under the age of 18 years may be commenced any time prior to the victim's 28th birthday.

The specified sex offenses in this new law are:

- Rape;
- Sodomy;
- Child molestation;
- Oral copulation;
- Continuous sexual abuse of a child; and,
- Forcible sexual penetration by a foreign object.

Child Victims' Testimony

When a serious crime is alleged to have been committed against a young child, most often the child is able to testify in court without any difficulty. However, in some cases where the child is asked to testify against his or her alleged abuser, the experience is so intimidating that he or she is unwilling or unable to do so when the defendant is located in the same room.

Under existing law, a court may allow a minor age 13 years or under whose testimony will be that her or she was the victim of a violent felony or sexual abuse to testify by closed-circuit television if the court finds that one of four specific factors will so impact the minor as to make he or she unavailable to testify: (1) threats of serious bodily injury to be inflicted on the minor or a family member, threats of deportation or incarceration of the minor or a family member, threats to remove the child from the home or dissolution of the family, which were made in an attempt to dissuade the minor from testifying; (2) use of a deadly weapon in the commission of the offense; (3) infliction of great bodily injury in the commission of the offense; or, (4) conduct on the part of defense counsel or the defendant during the hearing or trial that causes the minor to be unable to continue his or her testimony.

However, in many cases of child abuse - although none of the four specific factors required under current law are present, the child-witness is, nonetheless, too intimidated to testify in the immediate presence of his or her alleged abuser and without the child's testimony the charges often must be dismissed.

SB 138 (Maldonado), Chapter 480, expands the provisions for closed-circuit testimony by a child under the age of 13 years by allowing those same alternative procedures to be used in cases alleging felony child abuse against the minor. This new law also adds to

the list of enumerated circumstances under which closed-circuit testimony may be allowed to include whenever, "Testimony by the minor in the presence of the defendant would result in the child suffering emotional distress so that the child would be unavailable as a witness." Therefore, under this new law, as opposed to requiring that the impact on the child witness be attributable to a specific factor - such as use of a deadly weapon in the commission of the offense - a general finding that the child-witness will suffer emotional distress by testifying in the defendant's presence to such a degree that the minor would be unable to testify will be sufficient to allow the minor to testify by closed-circuit television.

Minors: Mental Competency

Under existing law, a defendant charged with a felony must be brought to trial within 60 days of the reinstatement of criminal proceedings following a determination of mental competency. However, there is not a similar provision allowing a reasonable period of time to prepare for trial when a misdemeanor defendant is determined to be mentally competent.

SB 330 (Cedillo), Chapter 36, allows a misdemeanor trial to be re-set within 30 days following reinstatement of criminal proceedings after a determination that the defendant is competent to stand trial.

Grand Juries

In some California counties, it is not uncommon for two grand juries, one civil and one criminal, to be impaneled at the same time. Under current law, the presiding judge of the superior court is charged with selecting both civil and criminal grand jury members, and supervising the grand juries.

SB 416 (Ackerman), Chapter 25, permits a judge appointed by the presiding judge of a superior court to supervise a grand jury upon the request of the Attorney General, or district attorney, or on his or her own motion to impanel an additional grand jury. SB 416 increases efficiency and gives added flexibility to the courts and provides for better communication between grand juries and judges.

If there are two grand juries, the supervising judge of each grand jury will be more readily available to respond to questions and requests from the one grand jury under his or her supervision rather than the presiding judge being responsible for supervising two grand juries at the same time.

Juveniles: Mental Competency

Existing law requires the Judicial Council to perform various duties designed to assist the judiciary. Existing law establishes various criteria for evaluating whether a minor is seriously emotionally disturbed or has a developmental disability.

SB 570 (Migden), Chapter 265, requires the Judicial Council, to the extent resources are available, to provide education on mental health and developmental disability issues affecting juveniles in delinquency proceedings to judicial officers and other public officers and entities. Specifically, this new law:

- Makes several findings and declarations regarding the need for mental competency evaluation in the juvenile justice system.

- Requires Judicial Council, to the extent resources are available, to provide education to judges on mental health and developmental disabilities issues affecting juveniles.

- States that if a minor is determined to have a serious mental disorder, is seriously emotionally disturbed, or has a developmental disability, the court may order that the minor be referred for evaluation, but the minor, upon advice of counsel, may decline the referral.

- Requires that the licensed mental health professional performing the evaluation meet the following criteria:

    - Is licensed to practice medicine in California and is trained and actively engaged in the practice of psychiatry; and,

    - Is a licensed as a psychologist, as defined by law.

- Provides that the evaluator shall personally examine the minor, conduct the appropriate examination, and present a written report to the court documenting his or her findings. If the minor is detained, the examination shall occur within three days of the court order and the evaluator's report shall be presented no more than five days after the examination unless good cause is shown.

- States that if the court determines that the juvenile is seriously emotionally disturbed or developmentally disabled, the minor shall be referred in accordance with existing law.

- States that prior to the preparation of a social study required under existing law, the minor shall be referred to a multidisciplinary team for dispositional review and recommendation. The multidisciplinary team shall consist of qualified persons who are collectively able to evaluate the minor's full rage of treatment needs. The multidisciplinary team must include one licensed mental health professional.

- States that the multidisciplinary team shall review the nature and circumstances of the case including family circumstances and the minor's tests and relevant evaluation results.

- States that the court shall review the treatment plan and the dispositional recommendations prepared by the multidisciplinary team and shall take them into

account when making the dispositional order in the case. The dispositional order in the case shall be consistent with the protection of the public and the primary treatment needs of the minor as identified in the report of the team. The disposition order shall incorporate the treatment program to the extent feasible.

- Provides that the dispositional in the case shall authorize placement of the minor in the least restrictive setting consistent with the protection of the public and the minor's treatment needs. The court shall give preferential consideration to the return of the minor to the home.

- States that "regional centers", as described, shall not be required to provide assessments or services to minors pursuant to this new law. Regional center representatives may, at their option and on a case-by-case basis, participate in the multidisciplinary teams.

- Requires that in order for the provisions of this new law to be applicable in a county, the board of supervisors in that county must adopt a resolution approving this new law. Counties may establish two or all three of the provisions specified in this new law and may implement the policy permanently or on a limited basis.

- Provides that funds from a grant from the Mental Heath Services Act used to fund programs specified in this new law shall only be used for health assessment, treatment, and evaluation.

Prisoner Risk and Needs Assessments

Currently, when a person is convicted of a felony, the county performs an assessment of that person's circumstances, including prior history and current needs. This assessment is performed on the county level and is utilized by the court to assess the individual's specific needs. However, this information is not universally given to the Department of Corrections and Rehabilitation (CDCR) when the offender is transferred to the CDCR's custody. In many cases, the CDCR does not get a copy of the assessment and, therefore, cannot utilize its findings to facilitate the most appropriate placement of the individual; instead, CDCR performs its own assessment of the inmate.

Although the Legislature funds, and the law requires, the CDCR to implement educational and vocational programs, less than 40,000 of the 164,000 inmates are participating in educational or vocational programs (including re-entry classes). California spends more than $6 billion to house inmates rather than preparing them for their eventual return to society. Counties should be allowed to contract with the CDCR to assume the needs assessment function and make a recommendation to the CDCR for appropriate placement for convicted felons being transferred to CDCR's custody. By coordinating and streamlining the assessment process, the offender can be placed at the appropriate prison directly from county jail and begin obtaining services immediately rather than repeating the assessment process in the reception centers (which currently takes up to six months).

SB 618 (Speier), Chapter 603, enacts the following uncodified legislative findings and declarations:

- That the successful reintegration of parolees into society depends upon the proper assessment of the offenders' risks and needs prior to entry into the prison system and appropriate direction of offenders into facilities and programs available to address risks or needs.

- The Legislature recognizes that the transfer of the assessment function from the CDCR to the community in which an offender committed his or her crime and to which the offender will likely be paroled may represent an effective and efficient means to perform an assessment.

- The Legislature encourages the participation of CDCR and interested counties to develop and implement plans to transfer assessment functions to local probation departments and courts, with the goal of improving public safety in the community and to better enable parolees to become contributing members of society.

Additionally, this new law provides:

- That counties may develop a multi-agency plan to prepare and enhance nonviolent felony offenders' successful reentry into the community.

- The plan to be developed by, and have the concurrence of, the presiding judge, the chief probation officer, the district attorney, the local custodial agency, and the public defender, or their designees and submitted to the board of supervisors for approval.

- Provides that when a pre-sentence report prepared by the probation department recommends state prison commitment, the report shall also include, but not be limited to, the offenders' treatment, literacy, and vocational needs.

- Requires that any sentence imposed pursuant to this new law include a recommendation for completion while in state prison, of all relevant programs to address those needs identified in the assessment.

- Authorizes the CDCR to:

    - Enter into an agreement with a county or counties to implement the multi-agency plan.

    - Provide funding for the purpose of the probation department performing the assessment.

- Requires CDCR, to the extent feasible, provide to the offender all programs pursuant to the court's recommendation.

CRIME PREVENTION

Firearms

Existing law states that in addition to requirements that apply to a local law enforcement agency's duty to report to the Department of Justice (DOJ) the recovery of a firearm, a police or sheriff's department shall, and any other law enforcement agency or agent may, report to DOJ in a manner determined by the Attorney General (AG) in consultation with the Bureau of Alcohol, Tobacco, Firearms and Explosives all available information necessary to identify and trace the history of all recovered firearms illegally possessed, have been used in a crime, or are suspected of having been used in a crime. In addition, any law enforcement agency or agent may report to the AG all information pertaining to any firearm taken into custody except where the firearm has been voluntarily placed with the law enforcement agency for storage.

AB 1060 (Liu), Chapter 715, makes changes to the requirement that law enforcement notify DOJ when it holds a firearm for safekeeping, and prohibits a local sheriff's office from processing the sale or transfer of a firearm. Specifically, this new law:

- Requires local law enforcement to submit descriptions of serialized property which has been, among other things, held for safekeeping directly into DOJ's automated property system for firearms.

- Repeals and makes conforming technical amendments to language that allows a local sheriff's office the right to process purchases, sales or loans, and transfers of firearms when neither the buyer nor seller is a licensed firearms dealer.

- Requires firearms dealers to keep all inventory firearms in secured storage at the firearms dealer's licensed premises.

- Requires security guard companies to report to DOJ transfers of firearms to company employees and allows DOJ to collect fees to process the reports of gun transfers in security guard companies.

- States that any law enforcement agency, including state agencies such as DOJ and the California Highway Patrol, may sell a firearm for a person unable to pass a background check after the person is taken into custody; irrespective of the five-day return rule in domestic violence cases, the firearm owner must still pass a background check.

- Clarifies that requiring a firearms dealer to keep all inventory firearms in secured storage at the firearms dealer's licensed premises does not apply when

the dealer is legally conducting business off the premises at gun shows and other authorized locations.

- Authorizes attorney's fees to the prevailing party in a civil suit brought over the return of firearms by law enforcement.

Wiretaps

Existing law defines "wire communication" as any transfer of the human voice made with the aid of specified connections between the point of origin and point of reception, furnished by specified persons or facilities. That definition also includes the electronic storage of these communications.

> **AB 1305 (Runner), Chapter 17,** deletes the electronic storage of these communications from the definition of "wire communication".

Child Abandonment: Newborns

Each year, newborn infants are abandoned or discarded, resulting in death. As a result, in 2000, the Legislature enacted a "safely surrendered baby" law which protects a parent or other person having lawful custody of a child 72 hours old or younger who voluntarily surrenders physical custody of the child to personnel on duty at a safe surrender site from prosecution under the state's child abandonment laws.

When a newborn baby is surrendered under the "safely surrendered baby" law, the county child welfare services agency assumes temporary custody of the newborn upon being notified; immediately conducts an investigation; and, within no more than 24 hours, reports all known identifying information concerning the child (except personal identifying information pertaining to the parent or person who surrendered the baby) to the California Missing Children Clearinghouse and to the National Crime Information Center. If the child is not reclaimed by the parent or guardian who abandoned the newborn, the child protective services agency takes custody of the child and files a petition in juvenile court to have the child declared a dependent of the court.

The parent or custodian who safely surrendered the newborn may reclaim the baby within 14 days of the date of surrender under specified conditions. If the newborn is still at the safe surrender site, the site may return the newborn to the parent or custodian claiming the baby or contact a child protective agency if there is a reasonable suspicion that the newborn has been the victim of child abuse or neglect.

This safely surrendered baby law is scheduled to expire on January 1, 2006.

> **SB 116 (Dutton), Chapter 625,** makes permanent the "Safely Surrendered Baby Law" under which a parent or other person with lawful custody of a baby 72 hours old or younger who surrenders the baby to a county-designated safe surrender site may not be prosecuted for child abandonment.

Rural Crime Prevention Program

The Counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare are authorized to develop and implement a Central Valley Rural Crime Prevention Program until January 1, 2005. The program is administered by the district attorney's office of each respective county under a joint powers agreement with the corresponding county sheriff's office.

> **SB 453 (Poochigian), Chapter 497**, Extends the operative date on the Central Valley Rural Crime Prevention Program until January 1, 2010.

Continuous Electronic Monitoring

Under current law, there is reluctance by some local probation offices and the California Department of Corrections and Rehabilitation (CDCR) to use "continuous electronic monitoring" (CEM) on parolees and probationers. The reluctance stems from the lack of explicit statutory authority to use this tool, the existence of explicit authority to use home monitoring technology, and the existence of prior statutory authority authorizing a pilot project in three counties to test CEM

Despite the reluctance in California to use this technology, Florida has been using CEM for quite some time. In a study performed with approximately 64,000 offenders released from prisons and jails in Florida between 1996 to 2000, the Florida Department of Corrections concluded, "Community Offenders placed on Electronic Monitoring are significantly less likely to have a revocation of any type, have a revocation for a felony, have a revocation for a misdemeanor, have a revocation for technical reason, or to abscond within one or two years of being placed on supervision. This conclusion is based on results from multivariate models which measure the effect of CEM on outcome measures, controlling for a host of variables such as current offense, prior convictions, violations, and prison sentences, demographic characteristics of the offenders, and the judicial circuit of supervision."

If California were to experience the same reduction in recidivism as Florida by using CEM on probationers and parolees, the result would be substantial costs savings, reduced overpopulation in jails and prisons, and reduced crime.

> **SB 619 (Speier), Chapter 484,** provides that a county probation department may use CEM (which may include GPS technology) to supervise persons on county probation, and authorizes the CDCR to utilize CEM to electronically monitor the whereabouts of parolees. Specifically, with regard to probation, this new law:
>
> - Provides that a county probation department may use CEM (which may include GPS technology) to supervise persons on county probation.
>
> - Provides that any use of CEM pursuant to this law shall have as its primary objective the enhancement of public safety by reducing the number of people victimized by

crimes committed by persons on probation.

- Enacts details of the use and effect of CEM, including that information about location may be used "as evidence to prove a violation of the terms of probation"; that a chief probation officer shall have the sole discretion to decide who shall be supervised using CEM by the probation department; and that persons supervised by CEM may be charged for the cost (after other fines, orders, and penalties have been satisfied). However, the department must waive those charges/fees upon a finding of an inability to pay.

With regard to the CDCR, this new law:

- Authorizes the CDCR to utilize CEM to electronically monitor the whereabouts of persons on parole.

- Provides that any person released on parole may be required to pay for that monitoring upon a finding of the ability to pay those costs. However, the CDCR shall waive any or all of that payment upon a finding of an inability to pay. The CDCR shall consider any remaining amounts the person has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the person pay for the CEM.

- Provides that the CDCR shall have the sole discretion to decide which persons shall be supervised by CEM.

With regard to legislative findings, this new law includes the following findings and declarations in relation to both probation and CDCR:

- Any use of CEM shall have as its primary objective the enhancement of public safety through the reduction in the number of people being victimized by crimes committed by persons on probation or parole.

- The Legislature intends in enacting this new law to specifically encourage a county probation department and the CDCR to utilize a system of CEM pursuant to this new law.

- The Legislature finds that because of its capability for continuous surveillance, CEM has been used in other parts of the country to monitor persons on formal probation and parole who are identified as requiring a high level of supervision and that CEM has proven to be an effective risk

management tool for supervising high-risk persons on probation and parole who are likely to re-offend where prevention and knowledge of their whereabouts is a high priority for maintaining public safety.

- It is the intent of the Legislature that CEM established pursuant to this new law maintains the highest public confidence, credibility, and public safety.

Police Vehicle Pursuits

Each year, police pursuits result in traffic accidents, often injuring officers and suspects as well as motorists and bystanders. Under existing law, in order for a public agency to have immunity from civil liability arising from injury, death or property damage occurring as a result of a police pursuit, that agency must adopt a policy on peace officer pursuits. However, existing law does not require the agency to actually implement the policy nor set any minimum standards for the policy.

SB 719 (Romero), Chapter 485, provides that an agency will only be granted such immunity if the agency not only adopts a pursuit policy but also promulgates that policy and provide regular and periodic training to its officers. At a minimum, the policy must comply with the guidelines set forth by the Commission on Peace Officer Standards and Training. This new law also increases penalties for fleeing in a vehicle from police. Specifically, this new law:

- Includes as a crime victim, for purposes or being eligible for compensation from the Restitution Fund, a person who suffers injury or death caused by any party where a peace officer is operating a motor vehicle in an effort to apprehend a suspect and the suspect is evading, fleeing, or otherwise attempting to elude the peace officer.

- Expresses legislative intent that each law enforcement agency adopt, promulgate, and require regular and periodic training consistent with an agency's specific pursuit policy that, at a minimum, complies with POST guidelines.

- Requires the Department of Motor Vehicles, upon updating the driver's handbook, to include at least one question in any of the noncommercial driver's license examinations of an applicant's knowledge and understanding to verify that the applicant has an understanding of the risks and punishments associated with eluding a pursuing peace officer's motor vehicle.

- Increases the penalty to a misdemeanor, punishable by up to one year in county jail, for any person while operating a motor vehicle to intentionally evade and willfully flee or otherwise attempt to elude a pursuing peace officer's motor vehicle or bicycle where no injury or property damage results.

- Increases the penalty for any person who commits the offense described above and proximately causes serious bodily injury or death. Where such an offense causes serious bodily injury to any person, a violation is an alternate felony/misdemeanor,

punishable by a term of three, five, or seven years in state prison; a fine of not less than $2,000 nor more than $10,000; or both the fine and imprisonment. Where the offense proximately causes the death of any person, a violation is a felony, punishable by a term of four, six, or ten years in the state prison.

- Requires all traffic safety programs receiving state funds and that include public awareness campaigns involving emergency vehicle operations to include in the public awareness campaign information on the risks to public safety of peace officer motor vehicle pursuits and the penalties that may result from evading a peace officer.

- Replaces existing reporting requirements with the requirement that the California Highway Patrol (CHP) shall develop a standard police pursuit reporting form for uniform reporting of all vehicle pursuit data by state and local law enforcement agencies and the CHP. Effective January 1, 2006, a report shall be made within 30 days of a motor vehicle pursuit and the form shall require the following information:

  - Whether any person involved in a pursuit or subsequent arrest was injured, specifying the nature of that injury. The form shall differentiate between the suspect driver, a suspect passenger and the peace officers involved.

  - The violations that caused the pursuit to be initiated.

  - The identity of the peace officers involved in the pursuit.

  - The means or methods used to stop the suspect being pursued.

  - All charges filed with the court by the district attorney.

  - The conditions of the pursuit, including duration, mileage, the number of peace officers involved, the number of law enforcement motor vehicles involved, the time of day, weather conditions, and the vehicle speeds.

  - Whether a pursuit resulted in a collision and a resulting injury or fatality to an uninvolved, third party and the corresponding number of people involved.

  - Whether the pursuit involved multiple law enforcement agencies.

  - How the pursuit was terminated.

- Requires the CHP to annually submit a report to the Legislature, including:

  - The number of motor vehicle pursuits reported to CHP during the year.

- The number of those pursuits that reportedly resulted in a collision in which an injury or fatality to an uninvolved, third party occurred.

- The total number of uninvolved, third parties who were injured or killed as a result of those collisions during the year.

- Effective July 1, 2007, this new law replaces existing law which grants law enforcement agencies immunity from liability resulting from high-speed chases, with provisions specifying that to qualify for such immunity a public agency employing peace officers must not only adopt but also promulgate a written policy on, and provide regular and periodic expanded training for, vehicular pursuits, as specified.

Home Detention: Electronic Monitoring

Penal Code Section 1203.016, which allows for counties to supervise certain offenders via electronic monitoring or supervising devices, does not specifically mention the use of a global positing system (GPS). At the request of Senator Ashburn, Legislative Counsel wrote an opinion addressing if Penal Code Section 1203.016 permits a county to authorize the use of GPS devices for purposes of home detention compliance programs for specified inmates and low-risk offenders.

Legislative Counsel's November 5, 2004 opinion stated, "Section 1203.016 of the Penal Code permits a county to authorize the use of GPS devices for purposes of home detention compliance programs for specified inmates and low-risk offenders." The opinion went on to say, "The term 'electronic monitoring or supervising devices' is not defined in Section 1203.016 or any other provision of the Penal Code. In our view, a device that transmits, receives, and interprets radio signals is an electronic device. Moreover, certain GPS devices can be used to track the location of a person or vehicle when the device is attached to the person or vehicle and to provide that location to a monitoring station. In our view, a GPS device, given its operation, meets the description of an electronic monitoring or supervising device which could be used to carry out the purposes of Section 1203.016."

SB 963 (Ashburn), Chapter 488, explicitly includes in the existing law pertaining to local home detention programs using "electronic monitoring or supervising devices" the use of "GPS devices and other" supervising devices.

CRIMINAL JUSTICE PROGRAMS

Lost and Stolen Firearms

Existing law requires the sheriff or police to submit descriptions of serialized property reported stolen, lost, found or recovered directly in the appropriate Department of Justice (DOJ) system. Any firearm included in one of the above categories is placed into the Automated Firearm System (AFS) and a written report is filed to justify the AFS entry.

Some agencies purge their written reports, eliminating the necessary documentation to justify their AFS entries. Once those written reports are purged, the DOJ then purges AFS entries even though the firearms have not been recovered. According to DOJ, in 2003 over 550 firearms were purged from the AFS without being recovered.

AB 86 (Levine), Chapter 167, prevents these firearms from being purged from the AFS database until they are found, recovered, no longer under observation, or the record is determined to have been entered in error. Additionally, this new law:

- Provides that any costs incurred by DOJ shall be reimbursed from funds other than the fees charged and collected from firearms dealers, as specified.

- Makes non-substantive changes by deleting reference to DOJ's Special Services Section, which no longer exists. (The Special Services Section formerly received reports of stolen, non-serialized property that had unique characteristics or inscriptions.)

Battered Women's Shelters: Advisory Council

Current law requires the Maternal and Child Health Branch of the Department of Health Services (DHS) to administer a comprehensive shelter-based services grant program to battered women's shelters. Current law further requires that, in implementing this grant program, DHS must consult with an advisory council. However, under current law, that advisory council exists until January 1, 2006.

AB 100 (Cohn), Chapter 462, extends the expiration date for the advisory council on battered women's shelters from January 1, 2006 to January 1, 2010.

Missing Persons DNA Data Base

Existing law established California's Missing Persons Data Base Program (MPDP) and the Missing Persons DNA Data Base Fund. The purpose of MPDP is to assist families of "high-risk" missing persons, law enforcement, and coroners/medical examiners to identify deceased individuals who could not be identified by traditional methods such as fingerprints, physical identification, and dental identification. The purpose of the fund is to establish and maintain MPDP's laboratory infrastructure, DNA sample storage, DNA analysis and labor costs for cases of missing persons and unidentified remains. The MPDP fund is maintained by a $2 fee increase (95 percent to the Department of Justice and five percent to the issuing agency) on death certificates issued by local government agencies or the state. Funding under the existing law expires on January 1, 2006 or until federal funding for the operation of the program becomes available. To date, there has been no federal funding authorized.

AB 940 (Chu), Chapter 471, extends the $2 fee increase on death certificates issued by a local government agency for the purpose of funding MPDP.

Juveniles: Mental Disability

Existing law requires the Director of the Division of Juvenile Justice to request a prosecuting attorney to petition the committing court for an order seeking the extended detention of a certain person who would otherwise be discharged from the Division if the Division determines that that person would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality.

> **SB 447 (Poochigian), Chapter 110,** limits the application of those sections to persons who are physically dangerous to the public because of a mental or physical deficiency, disorder, or abnormality which causes them to have serious difficulty controlling their dangerous behavior.

Prisoner Risk and Needs Assessments

Currently, when a person is convicted of a felony, the county performs an assessment of that person's circumstances, including prior history and current needs. This assessment is performed on the county level and is utilized by the court to assess the individual's specific needs. However, this information is not universally given to the Department of Corrections and Rehabilitation (CDCR) when the offender is transferred to the CDCR's custody. In many cases, the CDCR does not get a copy of the assessment and, therefore, cannot utilize its findings to facilitate the most appropriate placement of the individual; instead, CDCR performs its own assessment of the inmate.

Although the Legislature funds, and the law requires, the CDCR to implement educational and vocational programs, less than 40,000 of the 164,000 inmates are participating in educational or vocational programs (including re-entry classes). California spends more than $6 billion to house inmates rather than preparing them for their eventual return to society. Counties should be allowed to contract with the CDCR to assume the needs assessment function and make a recommendation to the CDCR for appropriate placement for convicted felons being transferred to CDCR's custody. By coordinating and streamlining the assessment process, the offender can be placed at the appropriate prison directly from county jail and begin obtaining services immediately rather than repeating the assessment process in the reception centers (which currently takes up to six months).

> **SB 618 (Speier), Chapter 603,** enacts the following uncodified legislative findings and declarations:
>
> - That the successful reintegration of parolees into society depends upon the proper assessment of the offenders' risks and needs prior to entry into the prison system and appropriate direction of offenders into facilities and programs available to address risks or needs.
>
> - The Legislature recognizes that the transfer of the assessment function from the CDCR to the community in which an offender committed his or her crime and to which the offender will likely be paroled may represent an effective and efficient

means to perform an assessment.

- The Legislature encourages the participation of CDCR and interested counties to develop and implement plans to transfer assessment functions to local probation departments and courts, with the goal of improving public safety in the community and to better enable parolees to become contributing members of society.

Additionally, this new law provides:

- That counties may develop a multi-agency plan to prepare and enhance nonviolent felony offenders' successful reentry into the community.

- The plan to be developed by, and have the concurrence of, the presiding judge, the chief probation officer, the district attorney, the local custodial agency, and the public defender, or their designees and submitted to the board of supervisors for approval.

- Provides that when a pre-sentence report prepared by the probation department recommends state prison commitment, the report shall also include, but not be limited to, the offenders' treatment, literacy, and vocational needs.

- Requires that any sentence imposed pursuant to this new law include a recommendation for completion while in state prison, of all relevant programs to address those needs identified in the assessment.

- Authorizes the CDCR to:

    - Enter into an agreement with a county or counties to implement the multi-agency plan.

    - Provide funding for the purpose of the probation department performing the assessment.

- Requires CDCR, to the extent feasible, provide to the offender all programs pursuant to the court's recommendation.

Police Vehicle Pursuits

Each year, police pursuits result in traffic accidents, often injuring officers and suspects as well as motorists and bystanders. Under existing law, in order for a public agency to have immunity from civil liability arising from injury, death or property damage occurring as a result of a police pursuit, that agency must adopt a policy on peace officer pursuits. However, existing law does not require the agency to actually implement the policy nor set any minimum standards for the policy.

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and provide regular and periodic training to its officers. At a minimum, the policy must comply with the guidelines set forth by the Commission on Peace Officer Standards and Training. This new law also increases penalties for fleeing in a vehicle from police. Specifically, this new law:

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- The violations that caused the pursuit to be initiated.

- The identity of the peace officers involved in the pursuit.

- The means or methods used to stop the suspect being pursued.

- All charges filed with the court by the district attorney.

- The conditions of the pursuit, including duration, mileage, the number of peace officers involved, the number of law enforcement motor vehicles involved, the time of day, weather conditions, and the vehicle speeds.

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  - The number of motor vehicle pursuits reported to CHP during the year.

  - The number of those pursuits that reportedly resulted in a collision in which an injury or fatality to an uninvolved, third party occurred.

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Restitution

Existing law requires the court to impose a mandatory restitution fine upon every person convicted of a crime.

SB 972 (Poochigian), Chapter 238, makes additional changes relating to the collection of victim restitution. Specifically, this new law:

- Authorizes a court to specify that funds confiscated at the time of arrest may be applied to a restitution fine or order.

- Repeals a four-year pilot program whereby the State Board of Control collaborated with judge to amend restitution orders, as specified.

- Allows the California Department of Corrections and Rehabilitation to continue to collaborate with local courts to use two-way, audio-video communication capability to amend restitution orders only if the victim is receiving assistance from the California Victims Compensation and Government Claims Board (CVCGCB).

- Requires that a personal representative or estate attorney notify the CVCGCB when a deceased person leaves money to an heir incarcerated in a state or local correctional facility.

CRIMINAL OFFENSES AND PENALTIES

Human Trafficking: Task Force, Penalties, Restitution

Human trafficking is present-day slavery, involving the recruitment, transportation, or sale of persons for forced labor. Through the use of violence, threats, and coercion, enslaved persons may be forced to work in the sex trade, domestic labor, factories, hotels or restaurants, agriculture, peddling, or begging.

Members of vulnerable populations are actively recruited by traffickers, who are sometimes connected to organized crime. Trafficking recruiters often mislead victims into believing that the opportunities recruiters offer will bring the victims and their families better lives. Traffickers then use techniques such as debt bondage; isolation from the public; and confiscation of passports, visas, or pieces of identification to keep victims enslaved. Women and children comprise the majority of trafficking victims.

Existing law in California prohibits slavery, holding a person in involuntary servitude or selling another person. A violation is punishable by two, three, or four years in state prison.

AB 22 (Lieber), Chapter 240, establishes new civil and criminal penalties for human trafficking, allows for asset forfeiture, provides restitution to victims of human trafficking and creates the California Alliance to Combat Trafficking and Slavery (California ACTS) Task Force. Specifically, this new law:

- Provides that any person who deprives or violates the personal liberty of another person with the intent to obtain forced labor or services or to cause a felony violation of several crimes related to prostitution is guilty of human trafficking, punishable by

three, four or five years in state prison if the victim is 18 years or older, and punishable by four, six or eight years in state prison if the victim is under the age of 18.

- Requires that, in addition to any other penalty, the court must order a person convicted of human trafficking to pay restitution to the victim(s) for the value of the victim's labor.

- Allows for forfeiture of the proceeds of human trafficking activity.

- Makes legislative findings that victims of human trafficking meet the requirements for federal victim assistance.

- Requires that, within 15 days of encountering a victim of human trafficking, law enforcement agencies shall provide brief letters that satisfy federal regulations regarding specific federal benefits available to human trafficking victims.

- Allows for restitution to be paid to victims of human trafficking from the state Restitution Fund when a claim is based on reliable corroborating information.

- Creates the right to file a civil lawsuit for damages for human trafficking. AB 22 provides that the plaintiff may be awarded up to three times his or her actual damages or $10,000, whichever is greater, and allows for the award of punitive damages upon proof of the defendant's malice, oppression, fraud or duress in committing the act of human trafficking.

- Creates an evidentiary privilege to allow confidential communications between a human trafficking victim and a human trafficking caseworker.

- Creates a new crime for maliciously disclosing the location of a shelter for human trafficking victims, punishable by up to six month in the county jail; a fine of $1,000; or both.

- Creates California ACTS to collect data on trafficking in persons in California, to study and make recommendations to strengthen state and local efforts to prevent trafficking, to protect and assist victims of trafficking, and to prosecute traffickers. AB 22 requires California ACTS to report its findings and recommendations to the Governor, the Attorney General, and the Legislature on or before July 1, 2007.

- Adds human trafficking to the list of offenses to which the Attorney General shall give priority.

Child Luring

The proliferation of the Internet has caused child predators to move from the playground to the World Wide Web in search of unsuspecting children. Children now encounter ever-increasing

dangers and parents, in turn, face a growing challenge to protect their children. Due to greater access to the Internet and a stronger sense of independence, teenagers are the most frequently targeted population for predatory luring.

> **AB 33 (Runner), Chapter 461**, increases the age of a minor, for the purpose of the child luring provisions, from 12 years of age or under to 14 years of age or under, and adds the crime of "child luring" to the list of crimes which makes a computer used in the commission of the offense subject to forfeiture.

Assault Weapons

Under current law, where a violation involving the manufacture, possession for sale, importation, transportation and distribution of any assault weapon or .50 BMG (Browning machine gun) rifle involves more than one such weapon, the defendant cannot not be charged with a separate offense for each weapon. Ambiguity in existing statutes identified by the courts needs to be addressed and existing law should clarify that assault weapons and .50 BMG rifles are treated the same as other specified illegal weapons by providing that a separate offense may be charged for each weapon involved.

> **AB 88 (Koretz), Chapter 690,** provides that, excepting a first violation involving no more than two firearms, where a defendant commits an offense involving the manufacture, possession for sale, importation, transportation or distribution, of any assault weapon or .50 BMG rifle, each weapon involved can be the basis of a separately punishable offense.

Harbor and Port Security

California's airports and ports are among the busiest in the nation - one-fifth of United States' international trade passes through the Los Angeles and San Francisco International Airports and through the seaports of Los Angeles, Long Beach, Oakland, and Port Hueneme; the Port of Los Angeles is the nation's busiest container port. However, despite the high traffic at both California's ports and airports, the Daily News of Los Angeles reports that funding for ports is far less in comparison to airport security funding, despite the fact that funding for port security has greatly increased in the past few years. Since the September 11th terror attacks, the Port of Los Angeles has spent more than $6 million for security measures. In June 2003, Homeland Security Secretary Tom Ridge announced that Los Angeles and Long Beach would receive more than $19 million in port security grants. Even with increased funding, the Los Angeles Port Police is the only United States police force dedicated exclusively to port activities.

> **AB 280 (Oropeza), Chapter 289,** applies the same misdemeanor weapons prohibitions and access limitations that currently exist for airports' restricted areas to restricted areas of passenger vessel terminals in harbors and ports. This new law prohibits a person from knowingly possessing specified weapons and other items within any sterile area of a harbor.

Driving Under the Influence: Penalties

Under existing law when a person is convicted of violating specified driving-under-the-influence (DUI) provisions, a court is required to consider a blood alcohol level of 0.20 percent or more, by weight, or the refusal to take a chemical test as a special factor that may justify enhancing the penalties in sentencing; in determining whether to grant probation; and, if probation is granted, in determining additional or enhanced terms and conditions of probation.

> **AB 571 (Levine), Chapter 89,** states that for the purposes of determining whether to grant probation and under what conditions, the court may consider a blood alcohol level of 0.15 percent or more.

Body Piercing

AB 99 (Runner), Chapter 741, Statutes of 1997, made it an infraction for any person to perform or offer to perform body piercing upon a minor without the consent of the parent or guardian. Penal Code Section 652 expired on January 1, 2005.

> **AB 646 (Runner), Chapter 307,** provides that it is an infraction for any person to perform or offer to perform body piercing upon a person under 18 years of age, punishable by a fine up to $250.

Crime: Impersonating a Veteran

The State of Washington passed legislation in 2004 making it a misdemeanor in the second degree to falsely assume the identity of a veteran with intent to defraud for personal gain or other unlawful activity. California has no such law.

> **AB 787 (DeVore), Chapter 457,** makes it a misdemeanor for a person to falsely claim to be, or present himself or herself to be a veteran member of the armed forces of the United States, with the intent to defraud. This new law does not apply to face-to-face solicitations involving less than $10.

Identity Theft: Asset Forfeiture

Existing law specifies various offenses for purposes of defining "criminal profiteering activity" and "patterns of criminal profiteering activity", and provides for the forfeiture of specified assets for persons who engage in listed offenses.

> **AB 988 (Bogh), Chapter 53,** expands the list of offenses that may constitute a pattern of criminal profiteering activity and providing for asset forfeiture to include the theft of personal information for the purposes of committing fraud.

Sexual Assault Medical Examinations

Existing law requires health practitioners, as defined, who provide medical services to certain persons to immediately make a report to a local law enforcement agency that contains certain personal and medical information, including persons suffering from an injury inflicted by a firearm, and persons suffering from an injury inflicted as the result of assaultive or abusive conduct.

AB 998 (Chu), Chapter 133, requires a health practitioner to make a report to law enforcement upon providing medical services to a person in the custody of law enforcement when sought in the course of a sexual assault investigation. Specifically, this new law:

- Authorizes any health practitioner employed in any health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, performs a forensic medical examination on any person in the custody of law enforcement from whom evidence is sought in connection with the commission and investigation of a crime of sexual assault, as specified, prepare a written report on a standard form and immediately provide the report or a copy of the report to the law enforcement agency who has custody of the individual examined.

- Provides that no health practitioner shall be required to perform forensic medical examinations as part of his or her duties unless he or she is part of an agency that specifically contracts with law enforcement to perform certain duties.

- States the examination and report is subject to confidentiality requirements of the Medical Information Act.

- States the report shall be released upon request, oral or written, to any person or agency involved in any related investigation and prosecution of a criminal case including, but not limited to, a law enforcement officer, district attorney, city attorney, crime laboratory, county licensing agency, and coroner. The report may be released to defense counsel or another third party only through discovery of documents in the possession of a prosecuting agency or following the issuance of a lawful court order authorizing the release of the report.

- Provides that a health practitioner who makes this report will not incur civil or criminal liability.

- States that refusal to comply will not be considered failure to report and not subject to criminal penalty.

Attempted Murder of a Custodial Officer

Existing law provides that an attempt to commit willful, deliberate, and premeditated murder, as defined, is punishable by imprisonment in the state prison for life with the possibility of parole.

Existing law further provides that an attempted murder of a peace officer or firefighter, as defined, committed under specified circumstances is punishable by imprisonment in the state prison for life with the possibility of parole or by 15-years-to-life if it is also proven that the attempt was willful, deliberate, and premeditated.

> **AB 999 (La Malfa), Chapter 52,** provides that the elements defining the crime of attempted murder of a police officer or firefighter, and the penalties, also apply to the attempted murder of a custodial officer.

Negligent Train Wrecking

Under existing law, any person who throws out a switch, removes a rail, places an obstruction, places an explosive, or sets fire to a bridge or trestle on any railroad with the intention of derailing, blowing up, or wrecking any passenger, freight, or other train, car or engine is guilty of a felony, punishable by imprisonment in the state prison for life without possibility of parole. The perpetrator must have the specific intent to derail or wreck the train and that offense does not apply to a person who places an obstruction on a railroad track with some other intent (such as with the intent to commit suicide, a situation which recently occurred in Glendale, California.)

> **AB 1067 (Frommer), Chapter 716**, provides that any person who unlawfully and with gross negligence places any obstruction upon or near the track of any railroad, commits any other act that proximately results in the damaging or derailing of any train, or causes bodily injury to rail passengers or train staff shall be punished by imprisonment in the state prison for two, three, or four years or by imprisonment in a county jail for not more than one year; by a fine not to exceed $2,500; or by both imprisonment and the fine.

Deceptive Identification Documents

The manufacturing of false documents is a public safety and privacy threat that manifests itself in a variety of ways, ranging from terrorist activities to underage drinking. There have always been fake identification cards. But the challenge of stemming the flood of phony documents has never been greater than it is now with increased threats to consumer privacy, advances in computer technology, the availability of "how-to" guidebooks to make fake identification and the realities of September 11th. According to an Associated Press article [Los Angeles Daily News (March 2, 2005)] which cited Federal Trade Commission data, nearly one-in-ten identity theft victims last year were from California. In 2004, the Los Angeles County Sheriff' Department received more than 20,000 reports of identity theft according to the Associated Press. Security Magazine reports that the quality of fake identification has improved dramatically with guidebooks such as one produced by a Redwood City company which offers 96 pages of photographs of all state licenses, Canadian province licenses, military and immigration identification, and Department of State driver's licenses, as well as major bank cards. While it is a crime to manufacture and sell false documents, it is not a crime to possess the equipment necessary to make the documents.

> **AB 1069 (Montanez), Chapter 326**, makes it unlawful to possess a document-making device with the intent that the device will be used to manufacture, alter, or

authenticate a deceptive identification document, punishable on a first offense as a misdemeanor and as an alternate felony-misdemeanor on a second or subsequent violation.

Sex Offenses: Megan's Law

Existing law establishes a three-tiered Internet Web site to notify the public of specified information regarding certain registered sex offenders. Under existing law, the Department of Justice (DOJ) is required to operate a "900" telephone number that members of the public may call to inquire if a named individual is a registered sex offender. The DOJ must also provide a CD-ROM or other electronic medium containing the names, registerable offense and zip codes of residence of registered sex offenders subject to public notification to every county sheriff's department, municipal police departments of cities with a population of more than 200,000, and specified other law enforcement agencies.

Under existing law, specified sex offenders (those convicted of specified acts of sexual battery or misdemeanor child molestation, and those who have successfully completed probation) may file an application with DOJ for exclusion from the Internet Web site. Existing law provides that probation may be granted to persons convicted of the specified offenses if the court makes specific findings.

Existing law also specifies required disclosures in lease or real estate agreements regarding the availability of information from the DOJ about sex offenders via the "900" telephone number or CD ROM.

AB 1323 (Vargas) Chapter 722, revises existing law to make it consistent with the changes made by the enactment of the law requiring the DOJ to make public certain information about sex offenders via an Internet website, and makes other changes to certain Megan's Law provisions. Specifically, this new law:

- Eliminates the CD-ROM program previously used by law enforcement to provide information to local law enforcement and the public about registered sex offenders.

- Eliminates the requirement that DOJ operate a "900" telephone number that members of the public could call, for a fee, to inquire whether up to two named individuals are serious- or high-risk sex offenders.

- Replaces the "900" number with a mail or electronic submission program, through which the public may provide DOJ with the names of at least six persons to determine whether any of them are subject to public notification.

- Provides that DOJ may establish a fee for processing requests received from the public through the mail or electronic submission program.

- Deletes the provision of law that allows a person convicted of specified sexual offenses and successfully completes probation to file for an exclusion from the

Internet Web site.

- Authorizes the application for exclusion from the Internet Web site by a person on probation at the time of the application or has successfully completed probation, provided the offender submits to the DOJ a certified copy of an official court document that clearly demonstrates that the offender was the victim's parent, step-parent, sibling or grandparent and the crime did not involve specified sexual offenses.

- Adds sentencing enhancements for a felony violation of provisions relating to unlawful sexual intercourse, sodomy, lewd and lascivious acts committed with a minor for money or other consideration.

Motor Vehicle Speed Contests

Despite local law enforcement efforts to curb illegal street racing, some individuals are repeatedly violating the law. The San Diego Sheriff's Department and San Diego Police Department report that several deaths and injuries have resulted from illegal street racing county wide. Illegal street racing in the San Diego region and elsewhere continues to be a threat to life and property, and has been the subject of numerous media reports.

AB 1325 (Vargas), Chapter 475, increases the penalties for violations of the prohibition against speed contests when there is injury as follows:

- If a person is convicted of engaging in a speed contest and that violation proximately causes bodily injury to a person other than the driver, that violation is punishable by imprisonment in the county jail for not less than 30 days nor more than six months or by a fine of $500 to $1,000.

- If the most recent offense of engaging in a motor vehicle speed contest in a five-year period proximately causes injury to a person other than the driver, a person convicted of that second violation shall be imprisoned in a county jail for not less than 30 days nor more than six months and by a fine of $500 to $1,000.

- If the most recent offense of engaging in a motor vehicle speed contest within a five-year period caused serious bodily injury to a person other than the driver, a person convicted of that second violation is guilty of an alternate felony/misdemeanor, punishable by imprisonment in the state prison for 16 months, 2 or 3 years or in a county jail for not less than 30 days nor more than one year and by a fine of $500 to $1,000.

Driving Under the Influence: Penalties

Existing law requires the court to refer a first-time offender whose blood alcohol concentration was 0.20 percent or more, by weight, or who refused to take a chemical test to participate in a licensed program consisting of at least 45 hours of program activities for at least six months or longer.

AB 1353 (Liu), Chapter 164, require a first-time offender whose blood alcohol concentration was 0.20 percent or more, by weight, or who refused to take a chemical test to participate for at least nine months or longer in a licensed program consisting of at least 60 hours of program activities.

Animal Abuse: Euthanasia

Existing law makes it a crime to engage in acts of animal abuse and makes it a misdemeanor to kill any animal by the use of carbon monoxide gas. Existing law does not address killing a conscious animal by using an intracardiac injection of a euthanasia agent.

Intracardiac administration of a euthanasia agent on a conscious animal involves injecting a large needle directly into the heart of that animal and can be dangerous to the person administering the shot. The animal often struggles, making it difficult to administer the shot correctly and the animal may have to be injected multiple times.

AB 1426 (Liu), Chapter 352, makes it a misdemeanor to kill any conscious animal by means of an intracardiac injection of a euthanasia agent. Specifically, this new law:

- States that no person shall kill any conscious animal by means of intracardiac injection of a euthanasia agent unless the animal is heavily sedated or anesthetized in a humane manner, or comatose, except as specified.

- Provides that with respect to killing a dog or a cat, no person shall use carbon monoxide gas, intracardiac injection of a euthanasia agent, a high-altitude decompression chamber, or nitrogen gas.

Identity Theft

The United States is currently engaged in worldwide military actions which require massive deployments of soldiers. Deployed service members are prime targets for identity thieves as they are less likely to realize they have been victims while deployed and often use online sources to maintain their finances.

AB 1566 (Calderon), Chapter 432, provides that any person convicted of acquiring, transferring or possessing the personal identifying information of a person deployed outside of the United States, as defined, is guilty of a misdemeanor punishable by up to one year in the county jail; a fine not to exceed $1,500; or both.

Gambling: Penalties

Existing law states that every person who participates or plays the game of "three-card monte" or any other game, device, sleight of hand, pretensions to fortune telling, trick, or other means whatever, by use of cards or other implements or instruments, or while betting on sides or hands

of any play or game, fraudulently obtains from another person money or property of any description, shall be punished as in case of larceny of property of like value.

AB 1753 (Committee on Governmental Organization), Chapter 546, increases penalties for those convicted of engaging in unlawful gambling activities and changes certain provisions regulating the business of gambling. Specifically, this new law:

- Deletes the requirement to be a California citizen in order to obtain key employee status.

- Provides minor changes to provisions dealing with the authority of licensed gambling establishments to enter into contracts with third parties for proposition player services.

- Allows the transportation and possession of slot machines if used as a prop for movies or television, as specified.

- States that every person convicted of participating or playing games such as three-card monte, or any other game, device, sleight of hand, pretensions to fortune telling, trick or other means, and fraudulently obtains from another person money or property:

  - A first offense is punishable by imprisonment in a county jail for a period of not more than one year or by a fine of not more than $5,000.

  - A second offense is punishable by imprisonment in a county jail for a period of not more than one year or by a fine of not more than $10,000.

- States that every person who operates a bookmaking scheme or pool-making operation is punishable as follows:

  - A first offense is punishable by up to one year in the county jail; by a fine of not more than $10,000; or by both imprisonment and fine.

  - A second offense is punishable up to one year in the county jail or in state prison; by fine of not more than $10,000; or by both imprisonment and fine.

  - Two or more offenses are punishable by up to one year in the county jail or in state prison; a fine of not more than $15,000; or by both imprisonment and fine.

- States that any person who gives, offers to give, promises to give, or attempts to give any money, bribe or thing of value to any person, as specified, is guilty of a felony, punishable by imprisonment in state prison; by a fine of not more than $10,000; or by both imprisonment and fine. A second offense is a felony, punishable by imprisonment in the state prison; by fine not more than $15,000; or by both

imprisonment and fine.

- States that any person who violates the law, as specified, or conspires to violate the law, as specified, shall be punished by imprisonment in a county jail for a period of not more than one year; by fine of not more than $10,000; or by both imprisonment and fine. A second offense is punishable by imprisonment in a county jail for a period of not more than one year or in the state prison; by fine of not more than $10,000; or by both imprisonment and fine.

- States that the sentence for violation of relevant gambling laws by imprisonment in the county jail for a period not more than one year; by a fine of more than $10,000; or both. A second offense is punishable by imprisonment in the county jail for not more than one year or by fine of not more than $15,000.

Firearms: Theft

Existing law states that for purposes of specified prohibitions on selling and possessing ammunition, "ammunition" includes, but is not be limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence.

SB 48 (Scott), Chapter 681, deletes "knowing" from the statute relating to the sale of ammunition to persons under the age of majority (18 years of age) and instead inserts a requirement of "reasonable" as a modifier to the existing defense for prohibited sales based on "reliance" on "bona fide evidence of majority and identity". This new law also allows ammunition vendors to sell ammunition or reloaded ammunition that can be used in both a rifle and a handgun to persons at least 18 years of age but less than 21 years of age if the vendor reasonably believes the ammunition is being acquired for use in a rifle and not a handgun.

Street Gangs

In enacting the Street Terrorism Enforcement and Prevention Act in 1988, California recognized that gangs were a major concern to the public and that their actions as a whole were detrimental to the public. Crimes listed in the Street Terrorism Enforcement and Prevention Act are subject to enhanced sentences if committed by gang members. In recent years, gangs have become increasingly more sophisticated and are using identity theft to help finance their criminal activities.

SB 444 (Ackerman), Chapter 482, expands the list of crimes that may be used to establish a "pattern of criminal gang activity" to include felony theft of an access card or account information; counterfeiting, designing, using, or attempting to use an access card; felony fraudulent use of an access card or account information; unlawful use of personal identifying information to obtain credit, goods, services, or medical information, and wrongfully obtaining Department of Motor Vehicles documentation.

Driving Under the Influence: Penalties

Existing law allows a court to impound a person's vehicle upon conviction of a specified driving under the influence (DUI) offense and allows an officer to impound a person's vehicle at the scene of a DUI when the person is arrested and the vehicle needs to be secured.

> **SB 547 (Cox), Chapter 159**, establishes a pilot program in Sacramento County that authorizes, until January 1, 2009, the impoundment of a person's vehicle by a peace officer for a DUI offense in combination with an intervention and a referral of that person to a DUI program, as specified, if that person has one or more prior DUI convictions within the past 10 years.
>
> This new law implements the program only to the extent that funds from private or federal sources are available to fund the program and only if the Sacramento County Board of Supervisors enacts an ordinance or resolution authorizing the implementation of the County pilot program. SB 547 requires the County to report to the Legislature regarding the effectiveness of the pilot program, as specified.

Trespass: Courthouse Security

Courthouses need additional tools for protecting the safety of employees, people seeking redress, individuals selected to serve on juries, individuals conducting business, among others.

> **SB 584 (Soto), Chapter 378**, makes intentionally avoiding submission to the screening and inspection of one's person and accessible property in accordance with the procedures being applied to control access when entering or re-entering a courthouse or a city, county, city and county or state building, a trespass punishable by up to six months in the county jail, by a fine not to exceed $1,000, or both, if the entrances have been posted with a statement providing reasonable notice that prosecution may result from the trespass.

Continuous Electronic Monitoring

Under current law, there is reluctance by some local probation offices and the California Department of Corrections and Rehabilitation (CDCR) to use "continuous electronic monitoring" (CEM) on parolees and probationers. The reluctance stems from the lack of explicit statutory authority to use this tool, the existence of explicit authority to use home monitoring technology, and the existence of prior statutory authority authorizing a pilot project in three counties to test CEM

Despite the reluctance in California to use this technology, Florida has been using CEM for quite some time. In a study performed with approximately 64,000 offenders released from prisons and jails in Florida between 1996 to 2000, the Florida Department of Corrections concluded, "Community Offenders placed on Electronic Monitoring are significantly less likely to have a revocation of any type, have a revocation for a felony, have a revocation for a misdemeanor, have a revocation for technical reason, or to abscond within one or two years of being placed on supervision. This conclusion is based on results from multivariate models which measure the

effect of CEM on outcome measures, controlling for a host of variables such as current offense, prior convictions, violations, and prison sentences, demographic characteristics of the offenders, and the judicial circuit of supervision."

If California were to experience the same reduction in recidivism as Florida by using CEM on probationers and parolees, the result would be substantial costs savings, reduced overpopulation in jails and prisons, and reduced crime.

SB 619 (Speier), Chapter 484, provides that a county probation department may use CEM (which may include GPS technology) to supervise persons on county probation, and authorizes the CDCR to utilize CEM to electronically monitor the whereabouts of parolees. Specifically, with regard to probation, this new law:

- Provides that a county probation department may use CEM (which may include GPS technology) to supervise persons on county probation.

- Provides that any use of CEM pursuant to this law shall have as its primary objective the enhancement of public safety by reducing the number of people victimized by crimes committed by persons on probation.

- Enacts details of the use and effect of CEM, including that information about location may be used "as evidence to prove a violation of the terms of probation"; that a chief probation officer shall have the sole discretion to decide who shall be supervised using CEM by the probation department; and that persons supervised by CEM may be charged for the cost (after other fines, orders, and penalties have been satisfied). However, the department must waive those charges/fees upon a finding of an inability to pay.

With regard to the CDCR, this new law:

- Authorizes the CDCR to utilize CEM to electronically monitor the whereabouts of persons on parole.

- Provides that any person released on parole may be required to pay for that monitoring upon a finding of the ability to pay those costs. However, the CDCR shall waive any or all of that payment upon a finding of an inability to pay. The CDCR shall consider any remaining amounts the person has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the person pay for the CEM.

- Provides that the CDCR shall have the sole discretion to decide which persons shall be supervised by CEM.

With regard to legislative findings, this new law includes the following findings and declarations in relation to both probation and CDCR:

- Any use of CEM shall have as its primary objective the enhancement of public safety through the reduction in the number of people being victimized by crimes committed by persons on probation or parole.

- The Legislature intends in enacting this new law to specifically encourage a county probation department and the CDCR to utilize a system of CEM pursuant to this new law.

- The Legislature finds that because of its capability for continuous surveillance, CEM has been used in other parts of the country to monitor persons on formal probation and parole who are identified as requiring a high level of supervision and that CEM has proven to be an effective risk management tool for supervising high-risk persons on probation and parole who are likely to re-offend where prevention and knowledge of their whereabouts is a high priority for maintaining public safety.

- It is the intent of the Legislature that CEM established pursuant to this new law maintains the highest public confidence, credibility, and public safety.

Police Vehicle Pursuits

Each year, police pursuits result in traffic accidents, often injuring officers and suspects as well as motorists and bystanders. Under existing law, in order for a public agency to have immunity from civil liability arising from injury, death or property damage occurring as a result of a police pursuit, that agency must adopt a policy on peace officer pursuits. However, existing law does not require the agency to actually implement the policy nor set any minimum standards for the policy.

SB 719 (Romero), Chapter 485, provides that an agency will only be granted such immunity if the agency not only adopts a pursuit policy but also promulgates that policy and provide regular and periodic training to its officers. At a minimum, the policy must comply with the guidelines set forth by the Commission on Peace Officer Standards and Training. This new law also increases penalties for fleeing in a vehicle from police. Specifically, this new law:

- Includes as a crime victim, for purposes or being eligible for compensation from the Restitution Fund, a person who suffers injury or death caused by any party where a peace officer is operating a motor vehicle in an effort to apprehend a suspect and the suspect is evading, fleeing, or otherwise attempting to elude the peace officer.

- Expresses legislative intent that each law enforcement agency adopt, promulgate, and require regular and periodic training consistent with an agency's specific pursuit policy that, at a minimum, complies with POST guidelines.

- Requires the Department of Motor Vehicles, upon updating the driver's handbook, to include at least one question in any of the noncommercial driver's license examinations of an applicant's knowledge and understanding to verify that the applicant has an understanding of the risks and punishments associated with eluding a pursuing peace officer's motor vehicle.

- Increases the penalty to a misdemeanor, punishable by up to one year in county jail, for any person while operating a motor vehicle to intentionally evade and willfully flee or otherwise attempt to elude a pursuing peace officer's motor vehicle or bicycle where no injury or property damage results.

- Increases the penalty for any person who commits the offense described above and proximately causes serious bodily injury or death. Where such an offense causes serious bodily injury to any person, a violation is an alternate felony/misdemeanor, punishable by a term of three, five, or seven years in state prison; a fine of not less than $2,000 nor more than $10,000; or both the fine and imprisonment. Where the offense proximately causes the death of any person, a violation is a felony, punishable by a term of four, six, or ten years in the state prison.

- Requires all traffic safety programs receiving state funds and that include public awareness campaigns involving emergency vehicle operations to include in the public awareness campaign information on the risks to public safety of peace officer motor vehicle pursuits and the penalties that may result from evading a peace officer.

- Replaces existing reporting requirements with the requirement that the California Highway Patrol (CHP) shall develop a standard police pursuit reporting form for uniform reporting of all vehicle pursuit data by state and local law enforcement agencies and the CHP. Effective January 1, 2006, a report shall be made within 30 days of a motor vehicle pursuit and the form shall require the following information:

    - Whether any person involved in a pursuit or subsequent arrest was injured, specifying the nature of that injury. The form shall differentiate between the suspect driver, a suspect passenger and the peace officers involved.

    - The violations that caused the pursuit to be initiated.

    - The identity of the peace officers involved in the pursuit.

    - The means or methods used to stop the suspect being pursued.

    - All charges filed with the court by the district attorney.

    - The conditions of the pursuit, including duration, mileage, the number of peace officers involved, the number of law enforcement motor vehicles involved, the

time of day, weather conditions, and the vehicle speeds.

- Whether a pursuit resulted in a collision and a resulting injury or fatality to an uninvolved, third party and the corresponding number of people involved.

- Whether the pursuit involved multiple law enforcement agencies.

- How the pursuit was terminated.

- Requires the CHP to annually submit a report to the Legislature, including:

  - The number of motor vehicle pursuits reported to CHP during the year.

  - The number of those pursuits that reportedly resulted in a collision in which an injury or fatality to an uninvolved, third party occurred.

  - The total number of uninvolved, third parties who were injured or killed as a result of those collisions during the year.

- Effective July 1, 2007, this new law replaces existing law which grants law enforcement agencies immunity from liability resulting from high-speed chases, with provisions specifying that to qualify for such immunity a public agency employing peace officers must not only adopt but also promulgate a written policy on, and provide regular and periodic expanded training for, vehicular pursuits, as specified.

DOMESTIC VIOLENCE

Battered Women's Shelters: Advisory Council

Current law requires the Maternal and Child Health Branch of the Department of Health Services (DHS) to administer a comprehensive shelter-based services grant program to battered women's shelters. Current law further requires that, in implementing this grant program, DHS must consult with an advisory council. However, under current law, that advisory council exists until January 1, 2006.

AB 100 (Cohn), Chapter 462, extends the expiration date for the advisory council on battered women's shelters from January 1, 2006 to January 1, 2010.

Intimate Partner Battering

In 2004, SB 1385 (Burton), Chapter 609, Statutes of 2004, changed language in Evidence Code Section 1107 from allowing expert testimony regarding "Battered Women's Syndrome" to allowing expert testimony regarding "Intimate Partner Battering." This change reflects the statewide and national trend of replacing the limited term "Battered Women's Syndrome" with the more accurate "Intimate Partner Battering", which more fully describes the breadth and depth

of current understandings of domestic violence. After SB 1385 was enacted, references to "Battered Women's Syndrome" in various code sections remained.

AB 220 (Committee on Public Safety), Chapter 215, changes the remaining statutory references from "Battered Women's Syndrome" to "Intimate Partner Battering."

Domestic Violence

The Attorney General's Task Force on the Criminal Justice System's Response to Domestic Violence met for two years and studied ways to improve statutes governing restraining orders to enhance the safety of domestic violence victims. One finding was that some district attorney offices are reluctant to bring criminal charges against those who violate a domestic violence restraining order. The Task Force concluded that such violations need to be dealt with more aggressively. One recommendation is to amend the Family Code to specifically authorize district attorneys and city attorneys to bring an action in family court seeking to hold a party in criminal contempt for violation of a domestic violence restraining order.

Another Task Force recommendation is to treat family court-issued restraining orders as if they were issued by a criminal court, which requires courts to enter the data regarding a domestic violence restraining order issued by a family court judge in the same database currently used for domestic violence restraining orders issued by a criminal court judge, giving law enforcement officers access to that information in a more timely and efficient manner.

The Task Force also recommended authorizing criminal court judges to issue an order, upon a good cause belief that harm or intimidation of a victim or witness has occurred or may reasonably occur, prohibiting all contact by the defendant with the victim, witness or his or her family. This type of court order is generally known as a "stay-away order" as it is not limited to contact intended to harass, intimidate, annoy or threaten a victim or witness. This type of order is normally issued by a family court under the Domestic Violence Protection Act.

SB 720 (Kuehl), Chapter 631, makes several changes to procedures regarding domestic violence protective orders. Specifically, this new law:

- Authorizes a district attorney or city attorney to initiate and pursue a court action for contempt against a party for failing to comply with a domestic violence protective order issued by a court. The penalty for contempt under these prosecutions is the same as in existing law.

- Provides that any attorney's fees and costs ordered by the court for contempt under this new law shall be paid to the Office of Emergency Services' account established for the purpose of funding domestic violence shelter service providers.

- Requires the court or the court's designee to transmit to the Department of Justice all data filed with the court with respect to domestic violence protective orders issued under the Family Code, including their issuance, modification, extension, or termination, using the same California Law Enforcement Telecommunications

System now used for criminal protective orders, as specified.

- Clarifies that the protective orders the court may issue under this provision may include a protective order prohibiting all contact by the defendant, as specified.

DNA

Missing Persons DNA Data Base

Existing law established California's Missing Persons Data Base Program (MPDP) and the Missing Persons DNA Data Base Fund. The purpose of MPDP is to assist families of "high-risk" missing persons, law enforcement, and coroners/medical examiners to identify deceased individuals who could not be identified by traditional methods such as fingerprints, physical identification, and dental identification. The purpose of the fund is to establish and maintain MPDP's laboratory infrastructure, DNA sample storage, DNA analysis and labor costs for cases of missing persons and unidentified remains. The MPDP fund is maintained by a $2 fee increase (95 percent to the Department of Justice and five percent to the issuing agency) on death certificates issued by local government agencies or the state. Funding under the existing law expires on January 1, 2006 or until federal funding for the operation of the program becomes available. To date, there has been no federal funding authorized.

AB 940 (Chu), Chapter 471, extends the $2 fee increase on death certificates issued by a local government agency for the purpose of funding MPDP.

DRIVING UNDER THE INFLUENCE

Driving Under the Influence: Penalties

Under existing law when a person is convicted of violating specified driving-under-the-influence (DUI) provisions, a court is required to consider a blood alcohol level of 0.20 percent or more, by weight, or the refusal to take a chemical test as a special factor that may justify enhancing the penalties in sentencing; in determining whether to grant probation; and, if probation is granted, in determining additional or enhanced terms and conditions of probation.

AB 571 (Levine), Chapter 89, states that for the purposes of determining whether to grant probation and under what conditions, the court may consider a blood alcohol level of 0.15 percent or more.

Driving Under the Influence: Restricted Driver's License

A 2004 Department of Motor Vehicles study, "An Evaluation of the Effectiveness of Ignition Interlock in California" recommended that repeat DUI offenders be able to obtain restricted driver's licenses requiring an interlock ignition device (IDD) earlier than allowed under existing law. The report also recommended that peace officers be allowed to impound a vehicle driven

by a person in violation of a driver's license restriction, requiring that person to operate a vehicle equipped with an IID.

> **AB 979 (Runner), Chapter 646,** allows for a person convicted of specified DUI provisions to apply for an IDD restricted driver's license after completing 12 months of his or her license suspension or revocation period rather than the current 12- to 30-month range.

Driving Under the Influence: Penalties

Existing law requires the court to refer a first-time offender whose blood alcohol concentration was 0.20 percent or more, by weight, or who refused to take a chemical test to participate in a licensed program consisting of at least 45 hours of program activities for at least six months or longer.

> **AB 1353 (Liu), Chapter 164,** require a first-time offender whose blood alcohol concentration was 0.20 percent or more, by weight, or who refused to take a chemical test to participate for at least nine months or longer in a licensed program consisting of at least 60 hours of program activities.

Driving Under the Influence: Vehicle Impoundment

Existing law provides it is unlawful for any person under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle.

> **SB 207 (Scott), Chapter 656,** authorizes pre-conviction vehicle impoundment for any individual suspected of driving under the influence (DUI) with a blood alcohol content of 0.10 percent or more and has one or more prior DUI convictions. Specifically, this new law:
>
> - States that the vehicle driven by the offender shall be impounded for five days if that person has been convicted of one prior DUI conviction and 15 days if the person has two or more prior DUI convictions.
>
> - Provides that the impounding agency, within two working days of impoundment, shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle informing the owner that the vehicle has been impounded.
>
> - States that the impounding agency shall maintain a published telephone number that provides information 24 hours per day regarding the impoundment of vehicles and the rights of a registered owner to request a hearing.
>
> - Requires that the registered and legal owner of a seized and removed vehicle shall be provided with the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage.

- Provides that any period the vehicle is subject to storage shall be credited toward a future impound ordered by the court.

- States that an impounding agency shall release a vehicle to the registered owner prior to the end of the impoundment under any of the following circumstances:

    - When the vehicle is a stolen vehicle;

    - When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage; or,

    - When the driver was not the sole registered owner of the vehicle and the registered owner to whom the car is being released agrees not to allow the driver to use the vehicle until after the termination of the impoundment period.

    - Provides that a vehicle may not be released without presentation of the owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration or upon order of a court.

    - States that the registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment and any administrative charges.

    - Provides that a vehicle removed and seized shall be released to the legal owner of the vehicle prior to the end of the impoundment if all of the following conditions are met:

        - The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in California or is another person, not the registered owner, holding a security interest in the vehicle;

        - The legal owner pays all the towing and storage fees related to the seizure of the vehicle, but the impounding agency may not collect the fees for post storage unless requested by the legal owner; and,

        - The legal owner or the legal owner's agent presents either lawful foreclosure documents, or an affidavit of repossession for the vehicle, and a security agreement or title showing proof of legal ownership for the vehicle.

    - States that a legal owner or legal owner's agent who obtains release of the vehicle may not release the vehicle to the registered owner of the vehicle unless the registered owner is a rental agency after the termination of the 15-day impoundment period.

    - Provides that the legal owner or legal owner's agent may not relinquish the vehicle to the registered owner until the registered owner or the owner's agent

presents his or her valid driver's license or valid temporary driver's license to the legal owner or the legal owner's agent.

- Provides that prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and any administrative charges incurred by the legal owner in connection with obtaining custody of the vehicle.

- States that a vehicle removed and seized shall be released to a rental car agency prior to the end of the impoundment if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

- States that the owner of a seized rental vehicle may continue to rent the vehicle upon recovery but may not rent that vehicle to that driver from whom the vehicle was seized until the impoundment period has ended.

- Provides that the rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges.

- Provides that the registered owner, not the legal owner, shall remain responsible for any towing and storage charges related to the impoundment, any administrative charges and any parking fines, penalties and administrative fees incurred by the registered owner.

- States that the impounding agency is not liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner's agent provided the release complies with this section.

ELDER ABUSE

Preservation of Testimony

Under existing law when a defendant has been charged with any crime, he or she in all cases and the prosecution in cases other than those for which the punishment may be death, a court may conduct a conditional examination, which will be reduced to writing and may be preserved on video tape, when the witness is unavailable, as defined:

Preserving a witness' testimony is important when there is reason to believe the witness may not be available at the time of trial, particularly true in cases involving elder abuse. Trials are frequently delayed and a case may not go to trial for months or even years after it has been filed. If a victim dies, leaves California, or becomes too ill to participate in the criminal justice process, the result can be cases being dismissed and offenders getting away with abuse.

AB 620 (Negrete McLeod), Chapter 305, lowers the age from 70 to 65 years of age as a ground for conducting a conditional examination of a witness to preserve his or her testimony in cases involving the commission of serious felonies. AB 620 also extends the right to defendants as well as the prosecution to request a conditional examination of a witness where there is evidence that the witness' life is in jeopardy.

EVIDENCE

Lost and Stolen Firearms

Existing law requires the sheriff or police to submit descriptions of serialized property reported stolen, lost, found or recovered directly in the appropriate Department of Justice (DOJ) system. Any firearm included in one of the above categories is placed into the Automated Firearm System (AFS) and a written report is filed to justify the AFS entry.

Some agencies purge their written reports, eliminating the necessary documentation to justify their AFS entries. Once those written reports are purged, the DOJ then purges AFS entries even though the firearms have not been recovered. According to DOJ, in 2003 over 550 firearms were purged from the AFS without being recovered.

AB 86 (Levine), Chapter 167, prevents these firearms from being purged from the AFS database until they are found, recovered, no longer under observation, or the record is determined to have been entered in error. Additionally, this new law:

- Provides that any costs incurred by DOJ shall be reimbursed from funds other than the fees charged and collected from firearms dealers, as specified.

- Makes non-substantive changes by deleting reference to DOJ's Special Services Section, which no longer exists. (The Special Services Section formerly received reports of stolen, non-serialized property that had unique characteristics or inscriptions.)

Child Abuse: Admissibility of Prior Conduct of Defendant

Existing law provides that, with certain exceptions, evidence of a person's character or a trait of his or her character, whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct, is inadmissible when offered to prove his or her conduct on a specified occasion. Existing law also provides that in a criminal case in which the defendant is accused of a sexual offense, evidence of the defendant's commission of another sexual offense or offenses is not made inadmissible by that law. Similarly, existing law provides that when a defendant is accused of domestic violence in a criminal action, evidence of the defendant's prior acts of domestic violence may be admitted to prove the defendant's conduct, in specified circumstances.

However, a court may, in its discretion, exclude such evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.

AB 114 (Cohn), Chapter 464, extends the law allowing admission of evidence of a defendant's prior conduct of child abuse to prove his or her conduct currently charged in a criminal prosecution for child abuse. Specifically, this new law provides:

- When a defendant is accused of child abuse in a criminal action, evidence of the defendant's prior acts of child abuse may be admitted to prove the defendant's conduct in the current prosecution.

- The admissibility of the prior acts of child abuse are subject to an evidentiary hearing conducted by the court to determine if the evidence of prior child abuse is such that its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time, create substantial danger of undue prejudice, or of misleading the jury.

- Help to protect victims of child abuse by allowing prior evidence of child abuse to be admissible in child abuses cases.

- The admission of this evidence will ensure that in appropriate cases, and subject to an evidentiary hearing regarding the probative value of such evidence, that juries are fully informed regarding an abuser's complete history of violence.

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Identity Theft: Asset Forfeiture

Existing law specifies various offenses for purposes of defining "criminal profiteering activity" and "patterns of criminal profiteering activity", and provides for the forfeiture of specified assets for persons who engage in listed offenses.

> **AB 988 (Bogh), Chapter 53,** expands the list of offenses that may constitute a pattern of criminal profiteering activity and providing for asset forfeiture to include the theft of personal information for the purposes of committing fraud.

Statute of Limitations

The United States Supreme Court has held that the statute of limitations reflects a legislative judgment that after a certain time no quantum of evidence is sufficient to convict. That judgment typically rests upon evidentiary concerns; for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable.

As the issue of child sexual abuse came increasingly to the national attention, some state legislatures, including California, enacted legislation that revived otherwise expired child sexual abuse cases. The statutes of limitations were extended retroactively to these old cases in recognition of the repressed memories of some victims or because victims have been afraid to come forward before the statute of limitations had expired.

However, the United States Supreme Court struck down these revival provisions as violative of the ex post facto clause of the United States Constitution. The Court stated that these laws deprived the defendant of fair warning that might have led him or her to preserve exculpatory evidence. The Court also commented that laws such as the revival laws raised a risk of arbitrary and potentially vindictive legislation.

In the 2003-04 Legislative Session, the California Legislature AB 1667 ((Kehoe), Chapter 368, Statutes of 2004, which repealed provisions relative to the statute of limitations on various sex offenses held unconstitutional by the United States Supreme Court (Chapter 368 Statutes of 2004.) However, due to technical problems, that law would have been unintentionally repealed as of March 1, 2005, leaving the unconstitutional provisions in place after that date.

> **SB 16 (Alquist), Chapter 2,** implements technical corrections to the Penal Code section regarding the tolling and revival of expired statutes of limitations.. Specifically, this new law:
>
> - States that existing law, effective until March 1, 2005, which deletes the unconstitutional provisions regarding the statute of limitations for specified sex offenses, remains in effect.
>
> - Provides that statutory provisions regarding the revival of expired statutes of limitations, held unconstitutional by the United States Supreme Court and subsequently repealed by AB 1667 (Kehoe), Chapter 368, Statutes of 2004, remain

repealed.

- Strikes all retroactive language in Penal Code Section 803 found by the United States Supreme Court to be unconstitutional in Stogner v. California (2003) 123 S. Ct. 2446.

- Adds violations of provisions relating to transactions involving a monetary instrument related to criminal activity (Penal Code Section 186.10) to those for which the commencement of the applicable statute of limitations commences only when the offense has been, or reasonably could have been discovered.

Statute of Limitations: Sexual Abuse Cases

The statute of limitations reflects a legislative judgment that after a certain period of time, no quantum of evidence is sufficient to convict a criminal defendant. That judgment typically rests upon evidentiary concerns; for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable.

Examples of existing statutes of limitations include the following provisions: (1) prosecution for crimes punishable by imprisonment in the state prison for eight years or more must be commenced within six years after the commission of the offense; (2) prosecution for crimes punishable by imprisonment in the state prison must be commenced within three years after commission of the offense; (3) prosecution for specified offenses punishable by imprisonment in the state prison relating to fraud, breach of fiduciary duty, theft or embezzlement upon an elder or dependent adult, or official misconduct must be commenced within four years after discovery of the commission of the offense or within four years after the completion of the offense, whichever is later; and, (4) prosecution for specified felony sex offenses must be commenced within 10 years of the commission of the offense or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later, as specified.

There is strong scientific evidence that supports the concept that child sexual abuse is unique. Delayed reporting by child victims is well established. Extending the statute of limitations in child molestation cases gives the victims the opportunity to gain independence and the maturity they need to face their abusers.

SB 111 (Alquist), Chapter 479, extends the statute of limitation in specified sexual abuse cases from 10 years from the date of the crime to any time before the alleged victim's 28th birthday. Specifically, this new law provides that prosecution for specified sex offenses alleged to have been committed when the victim was under the age of 18 years may be commenced any time prior to the victim's 28th birthday.

The specified sex offenses in this new law are:

- Rape;

- Sodomy;

- Child molestation;
- Oral copulation;
- Continuous sexual abuse of a child; and,
- Forcible sexual penetration by a foreign object.

GANG PROGRAMS

Street Gangs

In enacting the Street Terrorism Enforcement and Prevention Act in 1988, California recognized that gangs were a major concern to the public and that their actions as a whole were detrimental to the public. Crimes listed in the Street Terrorism Enforcement and Prevention Act are subject to enhanced sentences if committed by gang members. In recent years, gangs have become increasingly more sophisticated and are using identity theft to help finance their criminal activities.

> **SB 444 (Ackerman), Chapter 482,** expands the list of crimes that may be used to establish a "pattern of criminal gang activity" to include felony theft of an access card or account information; counterfeiting, designing, using, or attempting to use an access card; felony fraudulent use of an access card or account information; unlawful use of personal identifying information to obtain credit, goods, services, or medical information, and wrongfully obtaining Department of Motor Vehicles documentation.

HUMAN TRAFFICKING

Human Trafficking: Task Force, Penalties, Restitution.

Human trafficking is present-day slavery, involving the recruitment, transportation, or sale of persons for forced labor. Through the use of violence, threats, and coercion, enslaved persons may be forced to work in the sex trade, domestic labor, factories, hotels or restaurants, agriculture, peddling, or begging.

Members of vulnerable populations are actively recruited by traffickers, who are sometimes connected to organized crime. Trafficking recruiters often mislead victims into believing that the opportunities recruiters offer will bring the victims and their families better lives. Traffickers then use techniques such as debt bondage; isolation from the public; and confiscation of passports, visas, or pieces of identification to keep victims enslaved. Women and children comprise the majority of trafficking victims.

Existing law in California prohibits slavery, holding a person in involuntary servitude or selling another person. A violation is punishable by two, three, or four years in state prison.

AB 22 (Lieber), Chapter 240, establishes new civil and criminal penalties for human trafficking, allows for asset forfeiture, provides restitution to victims of human trafficking and creates the California Alliance to Combat Trafficking and Slavery (California ACTS) Task Force. Specifically, this new law:

- Provides that any person who deprives or violates the personal liberty of another person with the intent to obtain forced labor or services or to cause a felony violation of several crimes related to prostitution is guilty of human trafficking, punishable by three, four or five years in state prison if the victim is 18 years or older, and punishable by four, six or eight years in state prison if the victim is under the age of 18.

- Requires that, in addition to any other penalty, the court must order a person convicted of human trafficking to pay restitution to the victim(s) for the value of the victim's labor.

- Allows for forfeiture of the proceeds of human trafficking activity.

- Makes legislative findings that victims of human trafficking meet the requirements for federal victim assistance.

- Requires that, within 15 days of encountering a victim of human trafficking, law enforcement agencies shall provide brief letters that satisfy federal regulations regarding specific federal benefits available to human trafficking victims.

- Allows for restitution to be paid to victims of human trafficking from the state Restitution Fund when a claim is based on reliable corroborating information.

- Creates the right to file a civil lawsuit for damages for human trafficking. AB 22 provides that the plaintiff may be awarded up to three times his or her actual damages or $10,000, whichever is greater, and allows for the award of punitive damages upon proof of the defendant's malice, oppression, fraud or duress in committing the act of human trafficking.

- Creates an evidentiary privilege to allow confidential communications between a human trafficking victim and a human trafficking caseworker.

- Creates a new crime for maliciously disclosing the location of a shelter for human trafficking victims, punishable by up to six month in the county jail; a fine of $1,000; or both.

- Creates California ACTS to collect data on trafficking in persons in California, to study and make recommendations to strengthen state and local efforts to prevent trafficking, to protect and assist victims of trafficking, and to prosecute traffickers. AB 22 requires California ACTS to report its findings and recommendations to the

Governor, the Attorney General, and the Legislature on or before July 1, 2007.

- Adds human trafficking to the list of offenses to which the Attorney General shall give priority.

Human Trafficking: Task Force and Peace Officer Training

A victim of human trafficking is any person being manipulated or forced to work against his or her will or provide services for the benefit of another person.

By virtue of its large manufacturing and service-sector industries, global and economic strength, and large immigrant population, California is a major destination for human trafficking. Public awareness of human trafficking, while still relatively modest, has increased in the past decade. A handful of community-based organizations across California now provide services to victims and law enforcement is beginning to address the issue.

Local jurisdictions have only recently begun to address human trafficking. Local task forces have been created in the City of Los Angeles, the County of San Diego, and the San Francisco Bay Area with United States Department of Justice Grants. In addition, a task force has been created in Orange County with local resources. These local task forces bring law enforcement and victim social service providers together to identify human trafficking victims and bring perpetrators to justice. Currently, no state efforts exist to combat human trafficking and provide services to victims.

A statewide response to human trafficking should be established and training opportunities on human trafficking for peace officers should be provided.

SB 180 (Kuehl), Chapter 239, establishes the California Alliance to Combat Trafficking and Slavery task force (California ACTS) and requires development of a course of instruction for the training of law enforcement officers in California in responding to human trafficking. Specifically, new law:

- Establishes California ACTS to collect data on human trafficking in California, study and make recommendations to strengthen state and local efforts to prevent trafficking, to protect and assist victims of trafficking, and prosecute traffickers. This new law requires California ACTS to report its findings and recommendations to the Governor, the Attorney General, and the Legislature on or before July 1, 2007.

- Requires the California Commission on Peace Officer Standards and Training (POST) to implement by January 1, 2007 a course or courses of instruction for the training of law enforcement officers in California in investigating human trafficking complaints and to develop guidelines for law enforcement response to human trafficking.

- Provides that provisions of this new law creating the task force are repealed as of January 1, 2008 unless a later statute extends that date.

JUVENILES

Child Abuse: Admissibility of Prior Conduct of Defendant

Existing law provides that, with certain exceptions, evidence of a person's character or a trait of his or her character, whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct, is inadmissible when offered to prove his or her conduct on a specified occasion. Existing law also provides that in a criminal case in which the defendant is accused of a sexual offense, evidence of the defendant's commission of another sexual offense or offenses is not made inadmissible by that law. Similarly, existing law provides that when a defendant is accused of domestic violence in a criminal action, evidence of the defendant's prior acts of domestic violence may be admitted to prove the defendant's conduct, in specified circumstances.

However, a court may, in its discretion, exclude such evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.

AB 114 (Cohn), Chapter 464, extends the law allowing admission of evidence of a defendant's prior conduct of child abuse to prove his or her conduct currently charged in a criminal prosecution for child abuse. Specifically, this new law provides:

- When a defendant is accused of child abuse in a criminal action, evidence of the defendant's prior acts of child abuse may be admitted to prove the defendant's conduct in the current prosecution.

- The admissibility of the prior acts of child abuse are subject to an evidentiary hearing conducted by the court to determine if the evidence of prior child abuse is such that its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time, create substantial danger of undue prejudice, or of misleading the jury.

- Help to protect victims of child abuse by allowing prior evidence of child abuse to be admissible in child abuses cases.

- The admission of this evidence will ensure that in appropriate cases, and subject to an evidentiary hearing regarding the probative value of such evidence, that juries are fully informed regarding an abuser's complete history of violence.

Corrections: Pregnant Inmates

Existing law permits a pregnant inmate to be temporarily taken to a hospital outside the prison for the purposes of childbirth and provides for the care of any children so born until suitably placed. Under existing law, a pregnant inmate may be shackled during labor and delivery.

Existing law also permits the California Department of Corrections and Rehabilitation (CDCR) to limit dental services provided to pregnant inmates to those services that are necessary to meet basic needs including, but not limited to, treatment of injuries, acute infection, severe pain, or spontaneous bleeding, and repairs to dental prosthetic appliances.

AB 478 (Lieber), Chapter 608, requires that pregnant inmates be transported to a hospital outside of the prison in the least restrictive way possible. It also establishes minimum nutritional and medical standards for pregnant inmates. Specifically, this new law:

- Provides that the pregnant inmate shall not be shackled by the wrists, ankles, or both during labor, including during transport to the hospital.

- Prohibits shackling the pregnant inmate during delivery, and while in recovery after giving birth, except if shackling is deemed necessary for the safety and security of the inmate, the staff, and the public.

- Requires any community treatment program in which an inmate participates to include prenatal care, access to prenatal vitamins, childbirth education, and infant care.

- Requires the CDCR to establish minimum guidelines for pregnant inmates not eligible to participate in community treatment programs regarding nutrition, vitamins, information and education, and a dental cleaning.

- Requires that a woman who is pregnant during her incarceration to have access to complete prenatal care including all of the following:

    - A balanced nutritious diet approved by a doctor;

    - Prenatal and postpartum information and health care, including access to necessary vitamins recommended by a doctor;

    - Information pertaining to childbirth education and infant care; and,

    - A dental cleaning while in a state facility.

- Requires the Corrections Standards Authority to establish minimum standards for state correctional facilities by January 1, 2007. This new law requires that the Authority, in establishing minimum standards, seek the advice of the Department

of Health Services, physicians, psychiatrists, local public health officials and other interested persons.

- Provides that a juvenile ward in the custody of the CDCR has the same rights to prenatal care, education, and rights to be free from shackling during labor, delivery and recovery.

Body Piercing

AB 99 (Runner), Chapter 741, Statutes of 1997, made it an infraction for any person to perform or offer to perform body piercing upon a minor without the consent of the parent or guardian. Penal Code Section 652 expired on January 1, 2005.

AB 646 (Runner), Chapter 307, provides that it is an infraction for any person to perform or offer to perform body piercing upon a person under 18 years of age, punishable by a fine up to $250.

Juveniles: Mental Disability

Existing law requires the Director of the Division of Juvenile Justice to request a prosecuting attorney to petition the committing court for an order seeking the extended detention of a certain person who would otherwise be discharged from the Division if the Division determines that that person would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality.

SB 447 (Poochigian), Chapter 110, limits the application of those sections to persons who are physically dangerous to the public because of a mental or physical deficiency, disorder, or abnormality which causes them to have serious difficulty controlling their dangerous behavior.

Juveniles: Mental Competency

Existing law requires the Judicial Council to perform various duties designed to assist the judiciary. Existing law establishes various criteria for evaluating whether a minor is seriously emotionally disturbed or has a developmental disability.

SB 570 (Migden), Chapter 265, requires the Judicial Council, to the extent resources are available, to provide education on mental health and developmental disability issues affecting juveniles in delinquency proceedings to judicial officers and other public officers and entities. Specifically, this new law:

- Makes several findings and declarations regarding the need for mental competency evaluation in the juvenile justice system.

- Requires Judicial Council, to the extent resources are available, to provide education to judges on mental health and developmental disabilities issues affecting juveniles.

- States that if a minor is determined to have a serious mental disorder, is seriously emotionally disturbed, or has a developmental disability, the court may order that the minor be referred for evaluation, but the minor, upon advice of counsel, may decline the referral.

- Requires that the licensed mental health professional performing the evaluation meet the following criteria:

    - Is licensed to practice medicine in California and is trained and actively engaged in the practice of psychiatry; and,

    - Is a licensed as a psychologist, as defined by law.

- Provides that the evaluator shall personally examine the minor, conduct the appropriate examination, and present a written report to the court documenting his or her findings. If the minor is detained, the examination shall occur within three days of the court order and the evaluator's report shall be presented no more than five days after the examination unless good cause is shown.

- States that if the court determines that the juvenile is seriously emotionally disturbed or developmentally disabled, the minor shall be referred in accordance with existing law.

- States that prior to the preparation of a social study required under existing law, the minor shall be referred to a multidisciplinary team for dispositional review and recommendation. The multidisciplinary team shall consist of qualified persons who are collectively able to evaluate the minor's full rage of treatment needs. The multidisciplinary team must include one licensed mental health professional.

- States that the multidisciplinary team shall review the nature and circumstances of the case including family circumstances and the minor's tests and relevant evaluation results.

- States that the court shall review the treatment plan and the dispositional recommendations prepared by the multidisciplinary team and shall take them into account when making the dispositional order in the case. The dispositional order in the case shall be consistent with the protection of the public and the primary treatment needs of the minor as identified in the report of the team. The disposition order shall incorporate the treatment program to the extent feasible.

- Provides that the dispositional in the case shall authorize placement of the minor in the least restrictive setting consistent with the protection of the public and the minor's treatment needs. The court shall give preferential consideration to the return of the

minor to the home.

- States that "regional centers", as described, shall not be required to provide assessments or services to minors pursuant to this new law. Regional center representatives may, at their option and on a case-by-case basis, participate in the multidisciplinary teams.

- Requires that in order for the provisions of this new law to be applicable in a county, the board of supervisors in that county must adopt a resolution approving this new law. Counties may establish two or all three of the provisions specified in this new law and may implement the policy permanently or on a limited basis.

- Provides that funds from a grant from the Mental Heath Services Act used to fund programs specified in this new law shall only be used for health assessment, treatment, and evaluation.

PAROLE

High-Risk Sex Offenders: Intensive Supervision

Placing high-risk sex offenders on specialized supervision while on parole provides closer monitoring in order to prevent recidivism. Offenders classified as high-risk are extremely dangerous and having them on increased supervision while on parole will help protect the public from these serious offenders.

AB 102 (Cohn), Chapter 55, deletes the January 1, 2006 sunset on provisions of law that require the California Department of Corrections and Rehabilitation, to the extent feasible and subject to the appropriation of necessary funds, to ensure that all parolees who pose a high risk to the public of committing violent sex crimes are placed on an intensive and specialized parole supervision caseload.

Parole: Religious Counseling

California leads the nation with the highest rate of parolee failure. Seventy-nine percent of California's parolees fail to meet the conditions of their parole. The cost of re-incarcerating failed parolees is $900 million annually. While it costs $78 per day to house an inmate, it costs only $8 per day to supervise a parolee. Inmate involvement in religious programs is attributed to reducing disciplinary problems by more than 40 percent. For every $1 spent on providing rehabilitative services, including prison ministries, there is an average of $2 return in reduced corrections costs. Religious advisors assume a quasi-mentoring role for parolees, which is similar to that of mentors and juvenile offenders.

AB 627 (Leslie), Chapter 306, provides that a California Department of Corrections and Rehabilitation departmental or volunteer chaplain, who has ministered to or advised an

inmate, may continue to do so when the inmate is paroled as long as the departmental or volunteer chaplain notifies the warden and the parolee's agent in writing.

Prisoner Risk and Needs Assessments

Currently, when a person is convicted of a felony, the county performs an assessment of that person's circumstances, including prior history and current needs. This assessment is performed on the county level and is utilized by the court to assess the individual's specific needs. However, this information is not universally given to the Department of Corrections and Rehabilitation (CDCR) when the offender is transferred to the CDCR's custody. In many cases, the CDCR does not get a copy of the assessment and, therefore, cannot utilize its findings to facilitate the most appropriate placement of the individual; instead, CDCR performs its own assessment of the inmate.

Although the Legislature funds, and the law requires, the CDCR to implement educational and vocational programs, less than 40,000 of the 164,000 inmates are participating in educational or vocational programs (including re-entry classes). California spends more than $6 billion to house inmates rather than preparing them for their eventual return to society. Counties should be allowed to contract with the CDCR to assume the needs assessment function and make a recommendation to the CDCR for appropriate placement for convicted felons being transferred to CDCR's custody. By coordinating and streamlining the assessment process, the offender can be placed at the appropriate prison directly from county jail and begin obtaining services immediately rather than repeating the assessment process in the reception centers (which currently takes up to six months).

SB 618 (Speier), Chapter 603, enacts the following uncodified legislative findings and declarations:

- That the successful reintegration of parolees into society depends upon the proper assessment of the offenders' risks and needs prior to entry into the prison system and appropriate direction of offenders into facilities and programs available to address risks or needs.

- The Legislature recognizes that the transfer of the assessment function from the CDCR to the community in which an offender committed his or her crime and to which the offender will likely be paroled may represent an effective and efficient means to perform an assessment.

- The Legislature encourages the participation of CDCR and interested counties to develop and implement plans to transfer assessment functions to local probation departments and courts, with the goal of improving public safety in the community and to better enable parolees to become contributing members of society.

Additionally, this new law provides:

- That counties may develop a multi-agency plan to prepare and enhance nonviolent felony offenders' successful reentry into the community.

- The plan to be developed by, and have the concurrence of, the presiding judge, the chief probation officer, the district attorney, the local custodial agency, and the public defender, or their designees and submitted to the board of supervisors for approval.

- Provides that when a pre-sentence report prepared by the probation department recommends state prison commitment, the report shall also include, but not be limited to, the offenders' treatment, literacy, and vocational needs.

- Requires that any sentence imposed pursuant to this new law include a recommendation for completion while in state prison, of all relevant programs to address those needs identified in the assessment.

- Authorizes the CDCR to:

    - Enter into an agreement with a county or counties to implement the multi-agency plan.

    - Provide funding for the purpose of the probation department performing the assessment.

- Requires CDCR, to the extent feasible, provide to the offender all programs pursuant to the court's recommendation.

Continuous Electronic Monitoring

Under current law, there is reluctance by some local probation offices and the California Department of Corrections and Rehabilitation (CDCR) to use "continuous electronic monitoring" (CEM) on parolees and probationers. The reluctance stems from the lack of explicit statutory authority to use this tool, the existence of explicit authority to use home monitoring technology, and the existence of prior statutory authority authorizing a pilot project in three counties to test CEM

Despite the reluctance in California to use this technology, Florida has been using CEM for quite some time. In a study performed with approximately 64,000 offenders released from prisons and jails in Florida between 1996 to 2000, the Florida Department of Corrections concluded, "Community Offenders placed on Electronic Monitoring are significantly less likely to have a revocation of any type, have a revocation for a felony, have a revocation for a misdemeanor, have a revocation for technical reason, or to abscond within one or two years of being placed on supervision. This conclusion is based on results from multivariate models which measure the effect of CEM on outcome measures, controlling for a host of variables such as current offense, prior convictions, violations, and prison sentences, demographic characteristics of the offenders, and the judicial circuit of supervision."

If California were to experience the same reduction in recidivism as Florida by using CEM on probationers and parolees, the result would be substantial costs savings, reduced overpopulation in jails and prisons, and reduced crime.

SB 619 (Speier), Chapter 484, provides that a county probation department may use CEM (which may include GPS technology) to supervise persons on county probation, and authorizes the CDCR to utilize CEM to electronically monitor the whereabouts of parolees. Specifically, with regard to probation, this new law:

- Provides that a county probation department may use CEM (which may include GPS technology) to supervise persons on county probation.

- Provides that any use of CEM pursuant to this law shall have as its primary objective the enhancement of public safety by reducing the number of people victimized by crimes committed by persons on probation.

- Enacts details of the use and effect of CEM, including that information about location may be used "as evidence to prove a violation of the terms of probation"; that a chief probation officer shall have the sole discretion to decide who shall be supervised using CEM by the probation department; and that persons supervised by CEM may be charged for the cost (after other fines, orders, and penalties have been satisfied). However, the department must waive those charges/fees upon a finding of an inability to pay.

With regard to the CDCR, this new law:

- Authorizes the CDCR to utilize CEM to electronically monitor the whereabouts of persons on parole.

- Provides that any person released on parole may be required to pay for that monitoring upon a finding of the ability to pay those costs. However, the CDCR shall waive any or all of that payment upon a finding of an inability to pay. The CDCR shall consider any remaining amounts the person has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the person pay for the CEM.

- Provides that the CDCR shall have the sole discretion to decide which persons shall be supervised by CEM.

With regard to legislative findings, this new law includes the following findings and declarations in relation to both probation and CDCR:

- Any use of CEM shall have as its primary objective the enhancement of public safety through the reduction in the number of people being victimized by crimes committed by persons on probation or parole.

- The Legislature intends in enacting this new law to specifically encourage a county probation department and the CDCR to utilize a system of CEM pursuant to this new law.

- The Legislature finds that because of its capability for continuous surveillance, CEM has been used in other parts of the country to monitor persons on formal probation and parole who are identified as requiring a high level of supervision and that CEM has proven to be an effective risk management tool for supervising high-risk persons on probation and parole who are likely to re-offend where prevention and knowledge of their whereabouts is a high priority for maintaining public safety.

- It is the intent of the Legislature that CEM established pursuant to this new law maintains the highest public confidence, credibility, and public safety.

PEACE OFFICERS

Search Warrants

Penal Code Section 830.1(a) defines a "peace officer" as "any inspector or investigator employed in that capacity in the office of a district attorney". Existing law defines a "search warrant" as an order to a peace officer. However, existing law also states that a search warrant may only be served by a sheriff, marshal, or police officer. Thus, although district attorneys investigators are peace officers, they may not serve search warrants.

> **AB 182 (Benoit), Chapter 181,** allows any peace officer, including a district attorney investigator, to serve a search warrant rather than only a sheriff, marshal, or police officer.

Criminal Procedure: Preliminary Hearing Testimony

Existing law authorizes a finding of probable cause to be based in whole or in part upon the sworn testimony of a law enforcement officer relating to statements of declarants made out of court offered for the truth of the matter asserted.

> **AB 557 (Karnette), Chapter 18,** extends that authorization to testify at a preliminary hearing to include an honorably retired peace officer as long as that officer is relating statements made when he or she was an active officer.

Investigators: Department of Food and Agriculture

In a September 2003 organizational study, the Commission on Peace Officers Standards and Training (POST) recommended that the California Department of Food and Agriculture (CDFA) seek legislative amendments to Penal Code Section 803.11 to add CDFA investigators and seek legal clarification of the powers of a public officer and training required. The report went on to say, "CDFA investigators are designated as public officers . . . and are granted the authority to

make arrests, without a warrant or issue a citation and release the violator if the offense is committed in their presence or if the offense is a felony, arrest on probable cause. . . . POST staff found that investigators do in fact conduct activities that are considered hazardous during the course of an investigation, and that there have been threats, in some cases near assaults and, unfortunately in one instance, a death."

AB 900 (Benoit), Chapter 190, adds persons employed by CDFA to the list of persons who are not peace officers, but who may exercise powers of arrest of a peace officer and the power to serve warrants.

Peace Officers: Public Health Emergencies

Existing law authorizes county health officers to take any preventive measure necessary to protect and preserve the public health from any public health hazard during any "state of war emergency," "state of emergency," or "local emergency" and, upon consent of the county board of supervisors or a city governing body, to certify any public health hazard resulting from any disaster condition if certification is required for any federal or state disaster relief program. Should it be necessary for health officers to enlist the assistance of law enforcement agencies, peace officers need the authority to enforce the orders of state and local health departments.

SB 104 (Ortiz), Chapter 478, permits a peace officer to enforce a Department of Health Services (DHS) or local health department order to prevent the spread of contagious disease. Specifically, this new law:

- Provides that the sheriff may execute all orders of the local health officer issued to prevent the spread of any contagious or communicable disease.

- Provides that the chief of police has the same powers as the sheriff to execute all orders of the local health officer issued to prevent the spread of any contagious, infectious, or communicable disease.

- Provides that a peace officer may enforce an order of the DHS or local health officer within his or her jurisdiction. This new law provides that in issuing these orders, the health officer may consider whether it is necessary to advise the enforcement agency of the measures to prevent infection to an enforcement officer.

Police Vehicle Pursuits

Each year, police pursuits result in traffic accidents, often injuring officers and suspects as well as motorists and bystanders. Under existing law, in order for a public agency to have immunity from civil liability arising from injury, death or property damage occurring as a result of a police pursuit, that agency must adopt a policy on peace officer pursuits. However, existing law does not require the agency to actually implement the policy nor set any minimum standards for the policy.

SB 719 (Romero), Chapter 485, provides that an agency will only be granted such immunity if the agency not only adopts a pursuit policy but also promulgates that policy and provide regular and periodic training to its officers. At a minimum, the policy must comply with the guidelines set forth by the Commission on Peace Officer Standards and Training. This new law also increases penalties for fleeing in a vehicle from police. Specifically, this new law:

- Includes as a crime victim, for purposes or being eligible for compensation from the Restitution Fund, a person who suffers injury or death caused by any party where a peace officer is operating a motor vehicle in an effort to apprehend a suspect and the suspect is evading, fleeing, or otherwise attempting to elude the peace officer.

- Expresses legislative intent that each law enforcement agency adopt, promulgate, and require regular and periodic training consistent with an agency's specific pursuit policy that, at a minimum, complies with POST guidelines.

- Requires the Department of Motor Vehicles, upon updating the driver's handbook, to include at least one question in any of the noncommercial driver's license examinations of an applicant's knowledge and understanding to verify that the applicant has an understanding of the risks and punishments associated with eluding a pursuing peace officer's motor vehicle.

- Increases the penalty to a misdemeanor, punishable by up to one year in county jail, for any person while operating a motor vehicle to intentionally evade and willfully flee or otherwise attempt to elude a pursuing peace officer's motor vehicle or bicycle where no injury or property damage results.

- Increases the penalty for any person who commits the offense described above and proximately causes serious bodily injury or death. Where such an offense causes serious bodily injury to any person, a violation is an alternate felony/misdemeanor, punishable by a term of three, five, or seven years in state prison; a fine of not less than $2,000 nor more than $10,000; or both the fine and imprisonment. Where the offense proximately causes the death of any person, a violation is a felony, punishable by a term of four, six, or ten years in the state prison.

- Requires all traffic safety programs receiving state funds and that include public awareness campaigns involving emergency vehicle operations to include in the public awareness campaign information on the risks to public safety of peace officer motor vehicle pursuits and the penalties that may result from evading a peace officer.

- Replaces existing reporting requirements with the requirement that the California Highway Patrol (CHP) shall develop a standard police pursuit reporting form for uniform reporting of all vehicle pursuit data by state and local law enforcement agencies and the CHP. Effective January 1, 2006, a report shall be made within 30 days of a motor vehicle pursuit and the form shall require the following

information:

- Whether any person involved in a pursuit or subsequent arrest was injured, specifying the nature of that injury. The form shall differentiate between the suspect driver, a suspect passenger and the peace officers involved.

- The violations that caused the pursuit to be initiated.

- The identity of the peace officers involved in the pursuit.

- The means or methods used to stop the suspect being pursued.

- All charges filed with the court by the district attorney.

- The conditions of the pursuit, including duration, mileage, the number of peace officers involved, the number of law enforcement motor vehicles involved, the time of day, weather conditions, and the vehicle speeds.

- Whether a pursuit resulted in a collision and a resulting injury or fatality to an uninvolved, third party and the corresponding number of people involved.

- Whether the pursuit involved multiple law enforcement agencies.

- How the pursuit was terminated.

- Requires the CHP to annually submit a report to the Legislature, including:

  - The number of motor vehicle pursuits reported to CHP during the year.

  - The number of those pursuits that reportedly resulted in a collision in which an injury or fatality to an uninvolved, third party occurred.

  - The total number of uninvolved, third parties who were injured or killed as a result of those collisions during the year.

- Effective July 1, 2007, this new law replaces existing law which grants law enforcement agencies immunity from liability resulting from high-speed chases, with provisions specifying that to qualify for such immunity a public agency employing peace officers must not only adopt but also promulgate a written policy on, and provide regular and periodic expanded training for, vehicular pursuits, as specified.

Ben Clark Public Safety Training Center

The Ben Clark Public Safety Training Center was established in 1996 and is the first operational joint public safety training center in California. The Ben Clark Public Safety Training Center has provided advanced training to over 6,000 first responders from federal, state, county, and

municipal governments as well as military and specialized personnel. First-responder personnel benefits from convenient access to a fully equipped medical facility, a central location for the staging of interagency drills and public emergency response and training scenarios, advanced training facilities that meet time-critical needs and continuing education requirements, and on-site health professionals and educators. These amenities provide the federal and state government with the unique opportunity to implement training mandates with minimal cost.

SJR 14 (Battin), Chapter 62, urges the President and the Congress of the United States to recognize the Ben Clark Public Safety Training Center, located at March Air Reserve Base in Riverside County, as a leader in homeland security training throughout southern California.

RESTITUTION

Human Trafficking: Task Force, Penalties, Restitution

Human trafficking is present-day slavery, involving the recruitment, transportation, or sale of persons for forced labor. Through the use of violence, threats, and coercion, enslaved persons may be forced to work in the sex trade, domestic labor, factories, hotels or restaurants, agriculture, peddling, or begging.

Members of vulnerable populations are actively recruited by traffickers, who are sometimes connected to organized crime. Trafficking recruiters often mislead victims into believing that the opportunities recruiters offer will bring the victims and their families better lives. Traffickers then use techniques such as debt bondage; isolation from the public; and confiscation of passports, visas, or pieces of identification to keep victims enslaved. Women and children comprise the majority of trafficking victims.

Existing law in California prohibits slavery, holding a person in involuntary servitude or selling another person. A violation is punishable by two, three, or four years in state prison.

AB 22 (Lieber), Chapter 240, establishes new civil and criminal penalties for human trafficking, allows for asset forfeiture, provides restitution to victims of human trafficking and creates the California Alliance to Combat Trafficking and Slavery (California ACTS) Task Force. Specifically, this new law:

- Provides that any person who deprives or violates the personal liberty of another person with the intent to obtain forced labor or services or to cause a felony violation of several crimes related to prostitution is guilty of human trafficking, punishable by three, four or five years in state prison if the victim is 18 years or older, and punishable by four, six or eight years in state prison if the victim is under the age of 18.

- Requires that, in addition to any other penalty, the court must order a person convicted of human trafficking to pay restitution to the victim(s) for the value of the

victim's labor.

- Allows for forfeiture of the proceeds of human trafficking activity.

- Makes legislative findings that victims of human trafficking meet the requirements for federal victim assistance.

- Requires that, within 15 days of encountering a victim of human trafficking, law enforcement agencies shall provide brief letters that satisfy federal regulations regarding specific federal benefits available to human trafficking victims.

- Allows for restitution to be paid to victims of human trafficking from the state Restitution Fund when a claim is based on reliable corroborating information.

- Creates the right to file a civil lawsuit for damages for human trafficking. AB 22 provides that the plaintiff may be awarded up to three times his or her actual damages or $10,000, whichever is greater, and allows for the award of punitive damages upon proof of the defendant's malice, oppression, fraud or duress in committing the act of human trafficking.

- Creates an evidentiary privilege to allow confidential communications between a human trafficking victim and a human trafficking caseworker.

- Creates a new crime for maliciously disclosing the location of a shelter for human trafficking victims, punishable by up to six month in the county jail; a fine of $1,000; or both.

- Creates California ACTS to collect data on trafficking in persons in California, to study and make recommendations to strengthen state and local efforts to prevent trafficking, to protect and assist victims of trafficking, and to prosecute traffickers. AB 22 requires California ACTS to report its findings and recommendations to the Governor, the Attorney General, and the Legislature on or before July 1, 2007.

- Adds human trafficking to the list of offenses to which the Attorney General shall give priority.

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- Expresses legislative intent that each law enforcement agency adopt, promulgate, and require regular and periodic training consistent with an agency's specific pursuit policy that, at a minimum, complies with POST guidelines.

- Requires the Department of Motor Vehicles, upon updating the driver's handbook, to include at least one question in any of the noncommercial driver's license examinations of an applicant's knowledge and understanding to verify that the applicant has an understanding of the risks and punishments associated with eluding a pursuing peace officer's motor vehicle.

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- The violations that caused the pursuit to be initiated.
- The identity of the peace officers involved in the pursuit.
- The means or methods used to stop the suspect being pursued.
- All charges filed with the court by the district attorney.
- The conditions of the pursuit, including duration, mileage, the number of peace officers involved, the number of law enforcement motor vehicles involved, the time of day, weather conditions, and the vehicle speeds.
- Whether a pursuit resulted in a collision and a resulting injury or fatality to an uninvolved, third party and the corresponding number of people involved.
- Whether the pursuit involved multiple law enforcement agencies.
- How the pursuit was terminated.

- Requires the CHP to annually submit a report to the Legislature, including:
  - The number of motor vehicle pursuits reported to CHP during the year.
  - The number of those pursuits that reportedly resulted in a collision in which an injury or fatality to an uninvolved, third party occurred.
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Restitution

Existing law requires the court to impose a mandatory restitution fine upon every person convicted of a crime.

SB 972 (Poochigian), Chapter 238, makes additional changes relating to the collection of victim restitution. Specifically, this new law:

- Authorizes a court to specify that funds confiscated at the time of arrest may be applied to a restitution fine or order.

- Repeals a four-year pilot program whereby the State Board of Control collaborated with judge to amend restitution orders, as specified.

- Allows the California Department of Corrections and Rehabilitation to continue to collaborate with local courts to use two-way, audio-video communication capability to amend restitution orders only if the victim is receiving assistance from the California Victims Compensation and Government Claims Board (CVCGCB).

- Requires that a personal representative or estate attorney notify the CVCGCB when a deceased person leaves money to an heir incarcerated in a state or local correctional facility.

SEX OFFENSES

High-Risk Sex Offenders: Intensive Supervision

Placing high-risk sex offenders on specialized supervision while on parole provides closer monitoring in order to prevent recidivism. Offenders classified as high-risk are extremely dangerous and having them on increased supervision while on parole will help protect the public from these serious offenders.

AB 102 (Cohn), Chapter 55, deletes the January 1, 2006 sunset on provisions of law that require the California Department of Corrections and Rehabilitation, to the extent feasible and subject to the appropriation of necessary funds, to ensure that all parolees who pose a high risk to the public of committing violent sex crimes are placed on an intensive and specialized parole supervision caseload.

High-Risk Sex Offenders: Residency Restrictions

Under existing law, an inmate released on parole for any violation of child molestation or continuous sexual abuse of a child may not be placed or reside, for the duration of parole, within one-quarter mile of any school including any or all of Grades K-8, inclusive.

AB 113 (Cohn), Chapter 463, prohibits an inmate released on parole for child molestation or continuous sexual abuse of a child and who the California Department of Corrections and Rehabilitation has determined poses a high risk to the public from being

placed or residing, for the duration of parole, within one-half mile of any public or private school including any or all of Grades K-12, inclusive.

Sex Offenders in Long-Term Health Care Facilities

Existing law requires a person who has committed a specified sex offense to register with the law enforcement agency of the city, county or college campus in which the person resides. The person is required to register annually, and registration is a life-time requirement.

Existing law also separately regulates the licensure and operation of health care facilities, including long-term care facilities, as defined. Long-term care facilities, including nursing homes, often house elderly and infirm residents. Many residents do not have access to the Internet to research the location of sex offenders and some do not have others who can conduct the research for them. Therefore, such residents are often unaware when a registered sex offender has been released from prison to reside in a long-term care facility. According to a report cited by the author, there are nearly 70 registered sex offenders living in California nursing homes, without the knowledge of nursing home employees.

AB 217 (Vargas), Chapter 466, requires the California Department of Corrections and Rehabilitation (CDCR), the Department of Mental Health (DMH), or any other official in charge of the place of confinement to notify the long-term care facility when a registered sex offender is being released to reside at the facility. Specifically, this new law:

- Requires the CDCR, the DMH or any other official in charge of a place of confinement to notify the long-term care facility, in writing, that a registered sex offender is being released to reside at that facility.

- Seeks to protect a vulnerable population of seniors and the employees providing them service by assuring that the facility is notified that a sex offender will be residing at the facility.

Sex Offenders: Megan's Law

Existing law requires the Department of Justice (DOJ) to make available to the public, via an Internet Web site, certain information regarding persons required to register as sex offenders pursuant to Penal Code Section 290. Existing law also establishes a three-tiered system for determining which registered sex offenders are listed on the Internet Web site with their specific home addresses and which sex offenders are listed by their community of residence and Zip code only.

Existing law also provides that the Web site shall identify the following information regarding registered sex offenders: name and known aliases; a photograph; a physical description, including gender and race; criminal history, as specified; and home address or community of residence and zip code depending on the offense requiring registration.

The Megan's Law Web site is only effective to the extent that information is accurate and complete. The Megan's Law database does not provide information regarding how long the offender has been offense-free following release from incarceration.

AB 437 (Parra), Chapter 721, requires the DOJ to add to the Megan's Law database the following information provided there is funding available for this purpose and the DOJ has access to complete and accurate information on these dates:

- The dates of conviction for the crimes requiring registration as a sex offender;
- The dates of release from incarceration for those crimes; and,
- Any other information the DOJ deems relevant, except as excluded specifically by the law (such as the name or address of the sex offender's employer).

Sex Offenders: Changes in Registration Information

Existing law requires persons convicted of specified sex offenses to register as sex offenders and provide information to law enforcement whenever they change their address or transient location. Under existing law, if a sex offender is moving but does not know his or her new address at the time of the move, he or she must notify the last registering agency of the new address or location when it is ascertained. Existing law requires a registered sex offender moving out of California to notify law enforcement in writing of the new address or transient location, if known.

AB 439 (Parra), Chapter 704, requires sex offenders last registered at a residence address and moving out of California to notify law enforcement in person rather than in writing. If the person does not know his or her new address at the time of the move, he or she must later notify the last registering law enforcement agency. This subsequent notification must be provided in writing, sent by certified or registered mail. This new law also provides that if the registrant has more than one address at which he or she regularly resides, he or she must register in each of those jurisdictions regardless of the number of days or nights spent there.

Medi-Cal Coverage for Registered Sex Offenders

Numerous press accounts in the spring of 2005 reported that registered sex offenders in at least 14 states received Medicaid-paid prescriptions for Viagra and other prescription drugs used to treat erectile dysfunction. In response to these and other reports, on May 23, 2005, the Center for Medicaid and State Operations issued a "guidance to remind states there are a number of options to prevent the inappropriate use of such drugs and to inform states that we believe they should restrict the coverage of such drugs in the case of individuals convicted of a sex offense." On May 26, 2005, Governor Schwarzenegger announced that he had issued a directive to all applicable state agencies in California to immediately stop providing known sex offenders with taxpayer-funded medications, such as Viagra, Levitra or Cialis, to treat erectile dysfunction. It is

estimated that 137 registered sex offenders in California may have been prescribed erectile dysfunction drugs under Medi-Cal in the last year.

> **AB 522 (Plescia), Chapter 469,** ensures limited access to automated drug delivery systems in skilled nursing facilities and intermediate care facilities and prohibits access to prescription drugs for erectile dysfunction under the Medi-Cal program by a registered sex offender.

Correctional Institutions: Sexual Abuse

The Federal Government addressed the issue of sexual abuse in detention with the Prison Rape Elimination Act of 2003. Prisoner rape occurs in almost every detention facility at the local, state, and federal levels. Sexual abuse in a correctional setting harms inmates and wards physically and psychologically and undermines the potential for their successful community reintegration. Any and all forms of rape cause serious physical and psychological damage, which can lead to long-term effects such as substance abuse, self-hatred, depression, post-traumatic stress, rape-trauma syndrome and even suicide.

> **AB 550 (Goldberg), Chapter 303,** establishes the Sexual Abuse in Detention Elimination Act to protect all inmates and wards from sexual abuse while held in institutions operated by the California Department of Corrections and Rehabilitation (CDCR); requires CDCR to review the handbook regarding sexual abuse; requires CDCR to develop specified policies, practices, and protocols when placing inmates; creates the Office of the Sexual Abuse in Detention Elimination Ombudsperson; and requires CDCR to develop guidelines for allowing outside organizations and service agencies to provide resources and counseling to inmates and wards.

Sexual Assault Medical Examinations

Existing law requires health practitioners, as defined, who provide medical services to certain persons to immediately make a report to a local law enforcement agency that contains certain personal and medical information, including persons suffering from an injury inflicted by a firearm, and persons suffering from an injury inflicted as the result of assaultive or abusive conduct.

> **AB 998 (Chu), Chapter 133,** requires a health practitioner to make a report to law enforcement upon providing medical services to a person in the custody of law enforcement when sought in the course of a sexual assault investigation. Specifically, this new law:
>
> - Authorizes any health practitioner employed in any health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, performs a forensic medical examination on any person in the custody of law enforcement from whom evidence is sought in connection with the commission and investigation

of a crime of sexual assault, as specified, prepare a written report on a standard form and immediately provide the report or a copy of the report to the law enforcement agency who has custody of the individual examined.

- Provides that no health practitioner shall be required to perform forensic medical examinations as part of his or her duties unless he or she is part of an agency that specifically contracts with law enforcement to perform certain duties.

- States the examination and report is subject to confidentiality requirements of the Medical Information Act.

- States the report shall be released upon request, oral or written, to any person or agency involved in any related investigation and prosecution of a criminal case including, but not limited to, a law enforcement officer, district attorney, city attorney, crime laboratory, county licensing agency, and coroner. The report may be released to defense counsel or another third party only through discovery of documents in the possession of a prosecuting agency or following the issuance of a lawful court order authorizing the release of the report.

- Provides that a health practitioner who makes this report will not incur civil or criminal liability.

- States that refusal to comply will not be considered failure to report and not subject to criminal penalty.

Sex Offenses: Megan's Law

Existing law establishes a three-tiered Internet Web site to notify the public of specified information regarding certain registered sex offenders. Under existing law, the Department of Justice (DOJ) is required to operate a "900" telephone number that members of the public may call to inquire if a named individual is a registered sex offender. The DOJ must also provide a CD-ROM or other electronic medium containing the names, registerable offense and zip codes of residence of registered sex offenders subject to public notification to every county sheriff's department, municipal police departments of cities with a population of more than 200,000, and specified other law enforcement agencies.

Under existing law, specified sex offenders (those convicted of specified acts of sexual battery or misdemeanor child molestation, and those who have successfully completed probation) may file an application with DOJ for exclusion from the Internet Web site. Existing law provides that probation may be granted to persons convicted of the specified offenses if the court makes specific findings.

Existing law also specifies required disclosures in lease or real estate agreements regarding the availability of information from the DOJ about sex offenders via the "900" telephone number or CD ROM.

AB 1323 (Vargas) Chapter 722, revises existing law to make it consistent with the changes made by the enactment of the law requiring the DOJ to make public certain information about sex offenders via an Internet website, and makes other changes to certain Megan's Law provisions. Specifically, this new law:

- Eliminates the CD-ROM program previously used by law enforcement to provide information to local law enforcement and the public about registered sex offenders.

- Eliminates the requirement that DOJ operate a "900" telephone number that members of the public could call, for a fee, to inquire whether up to two named individuals are serious- or high-risk sex offenders.

- Replaces the "900" number with a mail or electronic submission program, through which the public may provide DOJ with the names of at least six persons to determine whether any of them are subject to public notification.

- Provides that DOJ may establish a fee for processing requests received from the public through the mail or electronic submission program.

- Deletes the provision of law that allows a person convicted of specified sexual offenses and successfully completes probation to file for an exclusion from the Internet Web site.

- Authorizes the application for exclusion from the Internet Web site by a person on probation at the time of the application or has successfully completed probation, provided the offender submits to the DOJ a certified copy of an official court document that clearly demonstrates that the offender was the victim's parent, step-parent, sibling or grandparent and the crime did not involve specified sexual offenses.

- Adds sentencing enhancements for a felony violation of provisions relating to unlawful sexual intercourse, sodomy, lewd and lascivious acts committed with a minor for money or other consideration.

Child Sexual Abuse

There are a number of serious concerns expressed by the child victims of sexual abuse, particularly when the abuser is a member of the victim's family. Existing law contains the "one-strike" sex crime sentencing law that provides sentences of 15-years or 25-years-to-life in certain sex crimes if specified circumstances in aggravation are found to be true. However, existing law also provides limited exceptions to the one-strike sex law for certain persons convicted of specified intra-familial child molestation offenses.

Existing law provides that such persons may be granted probation if the court makes all of the following findings: (1) the defendant is the victim's parent, or member of the victim's household or relative; (2) probation for the defendant is in the best interests of the child; (3) rehabilitation is feasible and the defendant is placed in a recognized treatment program immediately after the

grant of probation; (4) the defendant is removed from the household of the victim until the court determines that the best interests of the child would be served by returning the defendant to that household; and, (5) there is no threat of physical harm to the child victim if probation is granted.

Under existing law, prosecutors may seek deferred entry of judgment and treatment in child sexual abuse cases rather than pursuing criminal prosecution. In addition, under existing law, victims of child sexual abuse by family members have complained about being forced to attend counseling with offenders.

SB 33 (Battin), Chapter 477, changes the definition of "incest" and limits the granting of probation in sentencing in a case of child molestation and continuous sexual abuse of a child, as specified. Specifically, this new law:

- Changes the definition of "incest" and further defines the crime of "incest" to include related persons who are 14 years of age or older who commit fornication or adultery with each other.

- Limits provisions of existing law that allow prosecutors to seek deferred entry of judgment and referral to counseling in lieu of criminal prosecution in any case involving a minor victim to cases of physical abuse or neglect.

- Limits the court's ability to grant probation to a person convicted of child molestation or continuous sexual abuse of a child.

- States that probation shall not be granted to any person convicted of committing these offenses if the existence of any fact required to prove the allegation is alleged in the accusatory pleading and either admitted by the defendant or found to be true by the trier of fact.

- Provides that if a person is convicted of child molestation or continuous sexual abuse of a child and the probation ineligibility factors are not pled or proven, probation may only be granted if the following terms and conditions are met:

    - If the defendant is a member of the victim's household, the court finds probation is in the best interest of the child victim;

    - The court finds that rehabilitation of the defendant is feasible, the defendant is amenable to treatment, and the defendant is placed in a recognized treatment program designed to deal with child molestation immediately after the grant of probation or imposition of sentence;

    - If the defendant is a member of the victim's household, the defendant must be removed from the household and contact between the defendant and victim prohibited except as narrowly permitted and with the agreement of the victim; and,

- The court finds there is no threat of physical harm to the victim if probation is granted.

- Requires the court to state on the record its reasons for whatever sentence the court imposes.

- States that no victim shall be compelled to participate in a program or counseling, and no program may condition a defendant's enrollment on participation by the victim.

- Requires that recognized treatment programs include specified components, including substantial expertise in the treatment of child abuse; a treatment regimen designed to specifically address the offense; the ability to serve indigent clients; and adequate and specified reporting requirements to the probation department and to the court.

SEXUALLY VIOLENT PREDATORS

Sexually Violent Predators: Community Placement

Under existing law, specified law enforcement agencies that receive notice of the impending release or placement of a sexually violent predator (SVP) on community outpatient treatment to provide consolidated written comments to the court regarding the release, placement, location, and conditions of release. The Department of Mental Health (DMH) is required to issue a written statement to the commenting agencies and to the court within 10 days as to whether to adjust the release location or terms and conditions.

AB 893 (Shirley Horton), Chapter 162, requires that consideration be given to the age and profile of the victim, including gender and other physical characteristics, when the DMH Director proposes a specific placement for the outpatient treatment of a SVP.

Inter-Agency Agreements

Existing law provides that if a court finds a defendant to be a sexually violent predator (SVP), that person is committed to the Department of Mental Health (DMH) for two years of treatment, with additional two-year commitments upon successful new petition proceedings. Existing law also requires evaluation by two specified mental health professionals according to protocols established by DMH, and requires the evaluation to be completed at least six months prior to release from custody unless the California Department of Corrections and Rehabilitation (CDCR) received the inmate with less than nine months to serve, or a court or administrative action modified the inmate's sentence.

SB 383 (Maldonado), Chapter 137, allows the DMH to enter into an inter-agency agreement with the CDCR and local law enforcement agencies for services related to supervising and monitoring SVPs conditionally released into the community. Specifically, this new law:

- Provides that the DMH may contract with the CDCR, as well as with local law enforcement, for specific monitoring and supervising functions, such as drug testing, location monitoring, or administration of lie detector tests.

- Provides the DMH with a cost-savings option when arranging for the monitoring of SVPs. This new law does not change the status of SVPs, nor remove DMH from its ultimate responsibility of monitoring SVPs.

Sexually Violent Predators: Residence Restrictions

Under existing law, an inmate placed on parole for conviction of child molestation or continuous sexual abuse of a child may not reside within one-quarter mile of a public or private school including Grades K-8, inclusive.

SB 723 (Denham), Chapter 486, prohibits conditionally released patients in the Sexually Violent Predator Treatment Program from being placed within one-quarter mile of a public or private school providing instruction in Grades K-12 if the person has previously been convicted of child molestation or continuous sexual abuse of a child.

VEHICLES

Driving Under the Influence: Penalties

Under existing law when a person is convicted of violating specified driving-under-the-influence (DUI) provisions, a court is required to consider a blood alcohol level of 0.20 percent or more, by weight, or the refusal to take a chemical test as a special factor that may justify enhancing the penalties in sentencing; in determining whether to grant probation; and, if probation is granted, in determining additional or enhanced terms and conditions of probation.

AB 571 (Levine), Chapter 89, states that for the purposes of determining whether to grant probation and under what conditions, the court may consider a blood alcohol level of 0.15 percent or more.

Motor Vehicle Speed Contests

Despite local law enforcement efforts to curb illegal street racing, some individuals are repeatedly violating the law. The San Diego Sheriff's Department and San Diego Police Department report that several deaths and injuries have resulted from illegal street racing county wide. Illegal street racing in the San Diego region and elsewhere continues to be a threat to life and property, and has been the subject of numerous media reports.

AB 1325 (Vargas), Chapter 475, increases the penalties for violations of the prohibition against speed contests when there is injury as follows:

- If a person is convicted of engaging in a speed contest and that violation proximately causes bodily injury to a person other than the driver, that violation is punishable by imprisonment in the county jail for not less than 30 days nor more than six months or by a fine of $500 to $1,000.

- If the most recent offense of engaging in a motor vehicle speed contest in a five-year period proximately causes injury to a person other than the driver, a person convicted of that second violation shall be imprisoned in a county jail for not less than 30 days nor more than six months and by a fine of $500 to $1,000.

- If the most recent offense of engaging in a motor vehicle speed contest within a five-year period caused serious bodily injury to a person other than the driver, a person convicted of that second violation is guilty of an alternate felony/misdemeanor, punishable by imprisonment in the state prison for 16 months, 2 or 3 years or in a county jail for not less than 30 days nor more than one year and by a fine of $500 to $1,000.

Driving Under the Influence: Penalties

Existing law requires the court to refer a first-time offender whose blood alcohol concentration was 0.20 percent or more, by weight, or who refused to take a chemical test to participate in a licensed program consisting of at least 45 hours of program activities for at least six months or longer.

AB 1353 (Liu), Chapter 164, require a first-time offender whose blood alcohol concentration was 0.20 percent or more, by weight, or who refused to take a chemical test to participate for at least nine months or longer in a licensed program consisting of at least 60 hours of program activities.

Driving Under the Influence: Vehicle Impoundment

Existing law provides it is unlawful for any person under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle.

SB 207 (Scott), Chapter 656, authorizes pre-conviction vehicle impoundment for any individual suspected of driving under the influence (DUI) with a blood alcohol content of 0.10 percent or more and has one or more prior DUI convictions. Specifically, this new law:

- States that the vehicle driven by the offender shall be impounded for five days if that person has been convicted of one prior DUI conviction and 15 days if the person has two or more prior DUI convictions.

- Provides that the impounding agency, within two working days of impoundment, shall send a notice by certified mail, return receipt requested, to the legal owner of the

vehicle informing the owner that the vehicle has been impounded.

- States that the impounding agency shall maintain a published telephone number that provides information 24 hours per day regarding the impoundment of vehicles and the rights of a registered owner to request a hearing.

- Requires that the registered and legal owner of a seized and removed vehicle shall be provided with the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage.

- Provides that any period the vehicle is subject to storage shall be credited toward a future impound ordered by the court.

- States that an impounding agency shall release a vehicle to the registered owner prior to the end of the impoundment under any of the following circumstances:

    - When the vehicle is a stolen vehicle;

    - When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage; or,

    - When the driver was not the sole registered owner of the vehicle and the registered owner to whom the car is being released agrees not to allow the driver to use the vehicle until after the termination of the impoundment period.

    - Provides that a vehicle may not be released without presentation of the owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration or upon order of a court.

    - States that the registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment and any administrative charges.

    - Provides that a vehicle removed and seized shall be released to the legal owner of the vehicle prior to the end of the impoundment if all of the following conditions are met:

        - The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in California or is another person, not the registered owner, holding a security interest in the vehicle;

        - The legal owner pays all the towing and storage fees related to the seizure of the vehicle, but the impounding agency may not collect the fees for post storage unless requested by the legal owner; and,

- The legal owner or the legal owner's agent presents either lawful foreclosure documents, or an affidavit of repossession for the vehicle, and a security agreement or title showing proof of legal ownership for the vehicle.

- States that a legal owner or legal owner's agent who obtains release of the vehicle may not release the vehicle to the registered owner of the vehicle unless the registered owner is a rental agency after the termination of the 15-day impoundment period.

- Provides that the legal owner or legal owner's agent may not relinquish the vehicle to the registered owner until the registered owner or the owner's agent presents his or her valid driver's license or valid temporary driver's license to the legal owner or the legal owner's agent.

- Provides that prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and any administrative charges incurred by the legal owner in connection with obtaining custody of the vehicle.

- States that a vehicle removed and seized shall be released to a rental car agency prior to the end of the impoundment if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

- States that the owner of a seized rental vehicle may continue to rent the vehicle upon recovery but may not rent that vehicle to that driver from whom the vehicle was seized until the impoundment period has ended.

- Provides that the rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges.

- Provides that the registered owner, not the legal owner, shall remain responsible for any towing and storage charges related to the impoundment, any administrative charges and any parking fines, penalties and administrative fees incurred by the registered owner.

- States that the impounding agency is not liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner's agent provided the release complies with this section.

Driving Under the Influence: Penalties

Existing law allows a court to impound a person's vehicle upon conviction of a specified driving under the influence (DUI) offense and allows an officer to impound a person's vehicle at the scene of a DUI when the person is arrested and the vehicle needs to be secured.

SB 547 (Cox), Chapter 159, establishes a pilot program in Sacramento County that authorizes, until January 1, 2009, the impoundment of a person's vehicle by a peace officer for a DUI offense in combination with an intervention and a referral of that person to a DUI program, as specified, if that person has one or more prior DUI convictions within the past 10 years.

This new law implements the program only to the extent that funds from private or federal sources are available to fund the program and only if the Sacramento County Board of Supervisors enacts an ordinance or resolution authorizing the implementation of the County pilot program. SB 547 requires the County to report to the Legislature regarding the effectiveness of the pilot program, as specified.

Police Vehicle Pursuits

Each year, police pursuits result in traffic accidents, often injuring officers and suspects as well as motorists and bystanders. Under existing law, in order for a public agency to have immunity from civil liability arising from injury, death or property damage occurring as a result of a police pursuit, that agency must adopt a policy on peace officer pursuits. However, existing law does not require the agency to actually implement the policy nor set any minimum standards for the policy.

SB 719 (Romero), Chapter 485, provides that an agency will only be granted such immunity if the agency not only adopts a pursuit policy but also promulgates that policy and provide regular and periodic training to its officers. At a minimum, the policy must comply with the guidelines set forth by the Commission on Peace Officer Standards and Training. This new law also increases penalties for fleeing in a vehicle from police. Specifically, this new law:

- Includes as a crime victim, for purposes or being eligible for compensation from the Restitution Fund, a person who suffers injury or death caused by any party where a peace officer is operating a motor vehicle in an effort to apprehend a suspect and the suspect is evading, fleeing, or otherwise attempting to elude the peace officer.

- Expresses legislative intent that each law enforcement agency adopt, promulgate, and require regular and periodic training consistent with an agency's specific pursuit policy that, at a minimum, complies with POST guidelines.

- Requires the Department of Motor Vehicles, upon updating the driver's handbook, to include at least one question in any of the noncommercial driver's license examinations of an applicant's knowledge and understanding to verify that the applicant has an understanding of the risks and punishments associated with eluding a pursuing peace officer's motor vehicle.

- Increases the penalty to a misdemeanor, punishable by up to one year in county jail, for any person while operating a motor vehicle to intentionally evade and willfully flee or otherwise attempt to elude a pursuing peace officer's motor vehicle or bicycle

where no injury or property damage results.

- Increases the penalty for any person who commits the offense described above and proximately causes serious bodily injury or death. Where such an offense causes serious bodily injury to any person, a violation is an alternate felony/misdemeanor, punishable by a term of three, five, or seven years in state prison; a fine of not less than $2,000 nor more than $10,000; or both the fine and imprisonment. Where the offense proximately causes the death of any person, a violation is a felony, punishable by a term of four, six, or ten years in the state prison.

- Requires all traffic safety programs receiving state funds and that include public awareness campaigns involving emergency vehicle operations to include in the public awareness campaign information on the risks to public safety of peace officer motor vehicle pursuits and the penalties that may result from evading a peace officer.

- Replaces existing reporting requirements with the requirement that the California Highway Patrol (CHP) shall develop a standard police pursuit reporting form for uniform reporting of all vehicle pursuit data by state and local law enforcement agencies and the CHP. Effective January 1, 2006, a report shall be made within 30 days of a motor vehicle pursuit and the form shall require the following information:

  - Whether any person involved in a pursuit or subsequent arrest was injured, specifying the nature of that injury. The form shall differentiate between the suspect driver, a suspect passenger and the peace officers involved.

  - The violations that caused the pursuit to be initiated.

  - The identity of the peace officers involved in the pursuit.

  - The means or methods used to stop the suspect being pursued.

  - All charges filed with the court by the district attorney.

  - The conditions of the pursuit, including duration, mileage, the number of peace officers involved, the number of law enforcement motor vehicles involved, the time of day, weather conditions, and the vehicle speeds.

  - Whether a pursuit resulted in a collision and a resulting injury or fatality to an uninvolved, third party and the corresponding number of people involved.

  - Whether the pursuit involved multiple law enforcement agencies.

  - How the pursuit was terminated.

- Requires the CHP to annually submit a report to the Legislature, including:
    - The number of motor vehicle pursuits reported to CHP during the year.
    - The number of those pursuits that reportedly resulted in a collision in which an injury or fatality to an uninvolved, third party occurred.
    - The total number of uninvolved, third parties who were injured or killed as a result of those collisions during the year.
- Effective July 1, 2007, this new law replaces existing law which grants law enforcement agencies immunity from liability resulting from high-speed chases, with provisions specifying that to qualify for such immunity a public agency employing peace officers must not only adopt but also promulgate a written policy on, and provide regular and periodic expanded training for, vehicular pursuits, as specified.

VICTIMS

Human Trafficking: Task Force, Penalties, Restitution

Human trafficking is present-day slavery, involving the recruitment, transportation, or sale of persons for forced labor. Through the use of violence, threats, and coercion, enslaved persons may be forced to work in the sex trade, domestic labor, factories, hotels or restaurants, agriculture, peddling, or begging.

Members of vulnerable populations are actively recruited by traffickers, who are sometimes connected to organized crime. Trafficking recruiters often mislead victims into believing that the opportunities recruiters offer will bring the victims and their families better lives. Traffickers then use techniques such as debt bondage; isolation from the public; and confiscation of passports, visas, or pieces of identification to keep victims enslaved. Women and children comprise the majority of trafficking victims.

Existing law in California prohibits slavery, holding a person in involuntary servitude or selling another person. A violation is punishable by two, three, or four years in state prison.

AB 22 (Lieber), Chapter 240, establishes new civil and criminal penalties for human trafficking, allows for asset forfeiture, provides restitution to victims of human trafficking and creates the California Alliance to Combat Trafficking and Slavery (California ACTS) Task Force. Specifically, this new law:

- Provides that any person who deprives or violates the personal liberty of another person with the intent to obtain forced labor or services or to cause a felony violation of several crimes related to prostitution is guilty of human trafficking, punishable by three, four or five years in state prison if the victim is 18 years or older, and punishable by four, six or eight years in state prison if the victim is under the age of

- Requires that, in addition to any other penalty, the court must order a person convicted of human trafficking to pay restitution to the victim(s) for the value of the victim's labor.

- Allows for forfeiture of the proceeds of human trafficking activity.

- Makes legislative findings that victims of human trafficking meet the requirements for federal victim assistance.

- Requires that, within 15 days of encountering a victim of human trafficking, law enforcement agencies shall provide brief letters that satisfy federal regulations regarding specific federal benefits available to human trafficking victims.

- Allows for restitution to be paid to victims of human trafficking from the state Restitution Fund when a claim is based on reliable corroborating information.

- Creates the right to file a civil lawsuit for damages for human trafficking. AB 22 provides that the plaintiff may be awarded up to three times his or her actual damages or $10,000, whichever is greater, and allows for the award of punitive damages upon proof of the defendant's malice, oppression, fraud or duress in committing the act of human trafficking.

- Creates an evidentiary privilege to allow confidential communications between a human trafficking victim and a human trafficking caseworker.

- Creates a new crime for maliciously disclosing the location of a shelter for human trafficking victims, punishable by up to six month in the county jail; a fine of $1,000; or both.

- Creates California ACTS to collect data on trafficking in persons in California, to study and make recommendations to strengthen state and local efforts to prevent trafficking, to protect and assist victims of trafficking, and to prosecute traffickers. AB 22 requires California ACTS to report its findings and recommendations to the Governor, the Attorney General, and the Legislature on or before July 1, 2007.

- Adds human trafficking to the list of offenses to which the Attorney General shall give priority.

Battered Women's Shelters: Advisory Council

Current law requires the Maternal and Child Health Branch of the Department of Health Services (DHS) to administer a comprehensive shelter-based services grant program to battered women's shelters. Current law further requires that, in implementing this grant program, DHS must

consult with an advisory council. However, under current law, that advisory council exists until January 1, 2006.

AB 100 (Cohn), Chapter 462, extends the expiration date for the advisory council on battered women's shelters from January 1, 2006 to January 1, 2010.

Child Abuse: Admissibility of Prior Conduct of Defendant

Existing law provides that, with certain exceptions, evidence of a person's character or a trait of his or her character, whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct, is inadmissible when offered to prove his or her conduct on a specified occasion. Existing law also provides that in a criminal case in which the defendant is accused of a sexual offense, evidence of the defendant's commission of another sexual offense or offenses is not made inadmissible by that law. Similarly, existing law provides that when a defendant is accused of domestic violence in a criminal action, evidence of the defendant's prior acts of domestic violence may be admitted to prove the defendant's conduct, in specified circumstances.

However, a court may, in its discretion, exclude such evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.

AB 114 (Cohn), Chapter 464, extends the law allowing admission of evidence of a defendant's prior conduct of child abuse to prove his or her conduct currently charged in a criminal prosecution for child abuse. Specifically, this new law provides:

- When a defendant is accused of child abuse in a criminal action, evidence of the defendant's prior acts of child abuse may be admitted to prove the defendant's conduct in the current prosecution.

- The admissibility of the prior acts of child abuse are subject to an evidentiary hearing conducted by the court to determine if the evidence of prior child abuse is such that its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time, create substantial danger of undue prejudice, or of misleading the jury.

- Help to protect victims of child abuse by allowing prior evidence of child abuse to be admissible in child abuses cases.

- The admission of this evidence will ensure that in appropriate cases, and subject to an evidentiary hearing regarding the probative value of such evidence, that juries are fully informed regarding an abuser's complete history of violence.

Sex Offenders in Long-Term Health Care Facilities

Existing law requires a person who has committed a specified sex offense to register with the law enforcement agency of the city, county or college campus in which the person resides. The person is required to register annually, and registration is a life-time requirement.

Existing law also separately regulates the licensure and operation of health care facilities, including long-term care facilities, as defined. Long-term care facilities, including nursing homes, often house elderly and infirm residents. Many residents do not have access to the Internet to research the location of sex offenders and some do not have others who can conduct the research for them. Therefore, such residents are often unaware when a registered sex offender has been released from prison to reside in a long-term care facility. According to a report cited by the author, there are nearly 70 registered sex offenders living in California nursing homes, without the knowledge of nursing home employees.

AB 217 (Vargas), Chapter 466, requires the California Department of Corrections and Rehabilitation (CDCR), the Department of Mental Health (DMH), or any other official in charge of the place of confinement to notify the long-term care facility when a registered sex offender is being released to reside at the facility. Specifically, this new law:

- Requires the CDCR, the DMH or any other official in charge of a place of confinement to notify the long-term care facility, in writing, that a registered sex offender is being released to reside at that facility.

- Seeks to protect a vulnerable population of seniors and the employees providing them service by assuring that the facility is notified that a sex offender will be residing at the facility.

Preservation of Testimony

Under existing law when a defendant has been charged with any crime, he or she in all cases and the prosecution in cases other than those for which the punishment may be death, a court may conduct a conditional examination, which will be reduced to writing and may be preserved on video tape, when the witness is unavailable, as defined:

Preserving a witness' testimony is important when there is reason to believe the witness may not be available at the time of trial, particularly true in cases involving elder abuse. Trials are frequently delayed and a case may not go to trial for months or even years after it has been filed. If a victim dies, leaves California, or becomes too ill to participate in the criminal justice process, the result can be cases being dismissed and offenders getting away with abuse.

AB 620 (Negrete McLeod), Chapter 305, lowers the age from 70 to 65 years of age as a ground for conducting a conditional examination of a witness to preserve his or her testimony in cases involving the commission of serious felonies. AB 620 also extends the right to defendants as well as the prosecution to request a conditional examination of a witness where there is evidence that the witness' life is in jeopardy.

Sexually Violent Predators: Community Placement

Under existing law, specified law enforcement agencies that receive notice of the impending release or placement of a sexually violent predator (SVP) on community outpatient treatment to provide consolidated written comments to the court regarding the release, placement, location, and conditions of release. The Department of Mental Health (DMH) is required to issue a written statement to the commenting agencies and to the court within 10 days as to whether to adjust the release location or terms and conditions.

> **AB 893 (Shirley Horton), Chapter 162**, requires that consideration be given to the age and profile of the victim, including gender and other physical characteristics, when the DMH Director proposes a specific placement for the outpatient treatment of a SVP.

Identity Theft: Asset Forfeiture

Existing law specifies various offenses for purposes of defining "criminal profiteering activity" and "patterns of criminal profiteering activity", and provides for the forfeiture of specified assets for persons who engage in listed offenses.

> **AB 988 (Bogh), Chapter 53,** expands the list of offenses that may constitute a pattern of criminal profiteering activity and providing for asset forfeiture to include the theft of personal information for the purposes of committing fraud.

Statute of Limitations

The United States Supreme Court has held that the statute of limitations reflects a legislative judgment that after a certain time no quantum of evidence is sufficient to convict. That judgment typically rests upon evidentiary concerns; for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable.

As the issue of child sexual abuse came increasingly to the national attention, some state legislatures, including California, enacted legislation that revived otherwise expired child sexual abuse cases. The statutes of limitations were extended retroactively to these old cases in recognition of the repressed memories of some victims or because victims have been afraid to come forward before the statute of limitations had expired.

However, the United States Supreme Court struck down these revival provisions as violative of the ex post facto clause of the United States Constitution. The Court stated that these laws deprived the defendant of fair warning that might have led him or her to preserve exculpatory evidence. The Court also commented that laws such as the revival laws raised a risk of arbitrary and potentially vindictive legislation.

In the 2003-04 Legislative Session, the California Legislature AB 1667 ((Kehoe), Chapter 368, Statutes of 2004, which repealed provisions relative to the statute of limitations on various sex offenses held unconstitutional by the United States Supreme Court (Chapter 368 Statutes of

2004.) However, due to technical problems, that law would have been unintentionally repealed as of March 1, 2005, leaving the unconstitutional provisions in place after that date.

SB 16 (Alquist), Chapter 2, implements technical corrections to the Penal Code section regarding the tolling and revival of expired statutes of limitations.. Specifically, this new law:

- States that existing law, effective until March 1, 2005, which deletes the unconstitutional provisions regarding the statute of limitations for specified sex offenses, remains in effect.

- Provides that statutory provisions regarding the revival of expired statutes of limitations, held unconstitutional by the United States Supreme Court and subsequently repealed by AB 1667 (Kehoe), Chapter 368, Statutes of 2004, remain repealed.

- Strikes all retroactive language in Penal Code Section 803 found by the United States Supreme Court to be unconstitutional in Stogner v. California (2003) 123 S. Ct. 2446.

- Adds violations of provisions relating to transactions involving a monetary instrument related to criminal activity (Penal Code Section 186.10) to those for which the commencement of the applicable statute of limitations commences only when the offense has been, or reasonably could have been discovered.

Child Sexual Abuse

There are a number of serious concerns expressed by the child victims of sexual abuse, particularly when the abuser is a member of the victim's family. Existing law contains the "one-strike" sex crime sentencing law that provides sentences of 15-years or 25-years-to-life in certain sex crimes if specified circumstances in aggravation are found to be true. However, existing law also provides limited exceptions to the one-strike sex law for certain persons convicted of specified intra-familial child molestation offenses.

Existing law provides that such persons may be granted probation if the court makes all of the following findings: (1) the defendant is the victim's parent, or member of the victim's household or relative; (2) probation for the defendant is in the best interests of the child; (3) rehabilitation is feasible and the defendant is placed in a recognized treatment program immediately after the grant of probation; (4) the defendant is removed from the household of the victim until the court determines that the best interests of the child would be served by returning the defendant to that household; and, (5) there is no threat of physical harm to the child victim if probation is granted.

Under existing law, prosecutors may seek deferred entry of judgment and treatment in child sexual abuse cases rather than pursuing criminal prosecution. In addition, under existing law, victims of child sexual abuse by family members have complained about being forced to attend counseling with offenders.

SB 33 (Battin), Chapter 477, changes the definition of "incest" and limits the granting of probation in sentencing in a case of child molestation and continuous sexual abuse of a child, as specified. Specifically, this new law:

- Changes the definition of "incest" and further defines the crime of "incest" to include related persons who are 14 years of age or older who commit fornication or adultery with each other.

- Limits provisions of existing law that allow prosecutors to seek deferred entry of judgment and referral to counseling in lieu of criminal prosecution in any case involving a minor victim to cases of physical abuse or neglect.

- Limits the court's ability to grant probation to a person convicted of child molestation or continuous sexual abuse of a child.

- States that probation shall not be granted to any person convicted of committing these offenses if the existence of any fact required to prove the allegation is alleged in the accusatory pleading and either admitted by the defendant or found to be true by the trier of fact.

- Provides that if a person is convicted of child molestation or continuous sexual abuse of a child and the probation ineligibility factors are not pled or proven, probation may only be granted if the following terms and conditions are met:

    - If the defendant is a member of the victim's household, the court finds probation is in the best interest of the child victim;

    - The court finds that rehabilitation of the defendant is feasible, the defendant is amenable to treatment, and the defendant is placed in a recognized treatment program designed to deal with child molestation immediately after the grant of probation or imposition of sentence;

    - If the defendant is a member of the victim's household, the defendant must be removed from the household and contact between the defendant and victim prohibited except as narrowly permitted and with the agreement of the victim; and,

    - The court finds there is no threat of physical harm to the victim if probation is granted.

- Requires the court to state on the record its reasons for whatever sentence the court imposes.

- States that no victim shall be compelled to participate in a program or counseling, and no program may condition a defendant's enrollment on participation by the victim.

- Requires that recognized treatment programs include specified components, including substantial expertise in the treatment of child abuse; a treatment regimen designed to specifically address the offense; the ability to serve indigent clients; and adequate and specified reporting requirements to the probation department and to the court.

Statute of Limitations: Sexual Abuse Cases

The statute of limitations reflects a legislative judgment that after a certain period of time, no quantum of evidence is sufficient to convict a criminal defendant. That judgment typically rests upon evidentiary concerns; for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable.

Examples of existing statutes of limitations include the following provisions: (1) prosecution for crimes punishable by imprisonment in the state prison for eight years or more must be commenced within six years after the commission of the offense; (2) prosecution for crimes punishable by imprisonment in the state prison must be commenced within three years after commission of the offense; (3) prosecution for specified offenses punishable by imprisonment in the state prison relating to fraud, breach of fiduciary duty, theft or embezzlement upon an elder or dependent adult, or official misconduct must be commenced within four years after discovery of the commission of the offense or within four years after the completion of the offense, whichever is later; and, (4) prosecution for specified felony sex offenses must be commenced within 10 years of the commission of the offense or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later, as specified.

There is strong scientific evidence that supports the concept that child sexual abuse is unique. Delayed reporting by child victims is well established. Extending the statute of limitations in child molestation cases gives the victims the opportunity to gain independence and the maturity they need to face their abusers.

SB 111 (Alquist), Chapter 479, extends the statute of limitation in specified sexual abuse cases from 10 years from the date of the crime to any time before the alleged victim's 28th birthday. Specifically, this new law provides that prosecution for specified sex offenses alleged to have been committed when the victim was under the age of 18 years may be commenced any time prior to the victim's 28th birthday.

The specified sex offenses in this new law are:

- Rape;
- Sodomy;
- Child molestation;
- Oral copulation;

- Continuous sexual abuse of a child; and,

- Forcible sexual penetration by a foreign object.

Police Vehicle Pursuits

Each year, police pursuits result in traffic accidents, often injuring officers and suspects as well as motorists and bystanders. Under existing law, in order for a public agency to have immunity from civil liability arising from injury, death or property damage occurring as a result of a police pursuit, that agency must adopt a policy on peace officer pursuits. However, existing law does not require the agency to actually implement the policy nor set any minimum standards for the policy.

SB 719 (Romero), Chapter 485, provides that an agency will only be granted such immunity if the agency not only adopts a pursuit policy but also promulgates that policy and provide regular and periodic training to its officers. At a minimum, the policy must comply with the guidelines set forth by the Commission on Peace Officer Standards and Training. This new law also increases penalties for fleeing in a vehicle from police. Specifically, this new law:

- Includes as a crime victim, for purposes or being eligible for compensation from the Restitution Fund, a person who suffers injury or death caused by any party where a peace officer is operating a motor vehicle in an effort to apprehend a suspect and the suspect is evading, fleeing, or otherwise attempting to elude the peace officer.

- Expresses legislative intent that each law enforcement agency adopt, promulgate, and require regular and periodic training consistent with an agency's specific pursuit policy that, at a minimum, complies with POST guidelines.

- Requires the Department of Motor Vehicles, upon updating the driver's handbook, to include at least one question in any of the noncommercial driver's license examinations of an applicant's knowledge and understanding to verify that the applicant has an understanding of the risks and punishments associated with eluding a pursuing peace officer's motor vehicle.

- Increases the penalty to a misdemeanor, punishable by up to one year in county jail, for any person while operating a motor vehicle to intentionally evade and willfully flee or otherwise attempt to elude a pursuing peace officer's motor vehicle or bicycle where no injury or property damage results.

- Increases the penalty for any person who commits the offense described above and proximately causes serious bodily injury or death. Where such an offense causes serious bodily injury to any person, a violation is an alternate felony/misdemeanor, punishable by a term of three, five, or seven years in state prison; a fine of not less than $2,000 nor more than $10,000; or both the fine and imprisonment. Where the offense proximately causes the death of any person, a violation is a felony, punishable

by a term of four, six, or ten years in the state prison.

- Requires all traffic safety programs receiving state funds and that include public awareness campaigns involving emergency vehicle operations to include in the public awareness campaign information on the risks to public safety of peace officer motor vehicle pursuits and the penalties that may result from evading a peace officer.

- Replaces existing reporting requirements with the requirement that the California Highway Patrol (CHP) shall develop a standard police pursuit reporting form for uniform reporting of all vehicle pursuit data by state and local law enforcement agencies and the CHP. Effective January 1, 2006, a report shall be made within 30 days of a motor vehicle pursuit and the form shall require the following information:

  - Whether any person involved in a pursuit or subsequent arrest was injured, specifying the nature of that injury. The form shall differentiate between the suspect driver, a suspect passenger and the peace officers involved.

  - The violations that caused the pursuit to be initiated.

  - The identity of the peace officers involved in the pursuit.

  - The means or methods used to stop the suspect being pursued.

  - All charges filed with the court by the district attorney.

  - The conditions of the pursuit, including duration, mileage, the number of peace officers involved, the number of law enforcement motor vehicles involved, the time of day, weather conditions, and the vehicle speeds.

  - Whether a pursuit resulted in a collision and a resulting injury or fatality to an uninvolved, third party and the corresponding number of people involved.

  - Whether the pursuit involved multiple law enforcement agencies.

  - How the pursuit was terminated.

- Requires the CHP to annually submit a report to the Legislature, including:

  - The number of motor vehicle pursuits reported to CHP during the year.

  - The number of those pursuits that reportedly resulted in a collision in which an injury or fatality to an uninvolved, third party occurred.

- The total number of uninvolved, third parties who were injured or killed as a result of those collisions during the year.

- Effective July 1, 2007, this new law replaces existing law which grants law enforcement agencies immunity from liability resulting from high-speed chases, with provisions specifying that to qualify for such immunity a public agency employing peace officers must not only adopt but also promulgate a written policy on, and provide regular and periodic expanded training for, vehicular pursuits, as specified.

Domestic Violence

The Attorney General's Task Force on the Criminal Justice System's Response to Domestic Violence met for two years and studied ways to improve statutes governing restraining orders to enhance the safety of domestic violence victims. One finding was that some district attorney offices are reluctant to bring criminal charges against those who violate a domestic violence restraining order. The Task Force concluded that such violations need to be dealt with more aggressively. One recommendation is to amend the Family Code to specifically authorize district attorneys and city attorneys to bring an action in family court seeking to hold a party in criminal contempt for violation of a domestic violence restraining order.

Another Task Force recommendation is to treat family court-issued restraining orders as if they were issued by a criminal court, which requires courts to enter the data regarding a domestic violence restraining order issued by a family court judge in the same database currently used for domestic violence restraining orders issued by a criminal court judge, giving law enforcement officers access to that information in a more timely and efficient manner.

The Task Force also recommended authorizing criminal court judges to issue an order, upon a good cause belief that harm or intimidation of a victim or witness has occurred or may reasonably occur, prohibiting all contact by the defendant with the victim, witness or his or her family. This type of court order is generally known as a "stay-away order" as it is not limited to contact intended to harass, intimidate, annoy or threaten a victim or witness. This type of order is normally issued by a family court under the Domestic Violence Protection Act.

SB 720 (Kuehl), Chapter 631, makes several changes to procedures regarding domestic violence protective orders. Specifically, this new law:

- Authorizes a district attorney or city attorney to initiate and pursue a court action for contempt against a party for failing to comply with a domestic violence protective order issued by a court. The penalty for contempt under these prosecutions is the same as in existing law.

- Provides that any attorney's fees and costs ordered by the court for contempt under this new law shall be paid to the Office of Emergency Services' account established for the purpose of funding domestic violence shelter service providers.

- Requires the court or the court's designee to transmit to the Department of Justice all data filed with the court with respect to domestic violence protective orders issued under the Family Code, including their issuance, modification, extension, or termination, using the same California Law Enforcement Telecommunications System now used for criminal protective orders, as specified.

- Clarifies that the protective orders the court may issue under this provision may include a protective order prohibiting all contact by the defendant, as specified.

Restitution

Existing law requires the court to impose a mandatory restitution fine upon every person convicted of a crime.

SB 972 (Poochigian), Chapter 238, makes additional changes relating to the collection of victim restitution. Specifically, this new law:

- Authorizes a court to specify that funds confiscated at the time of arrest may be applied to a restitution fine or order.

- Repeals a four-year pilot program whereby the State Board of Control collaborated with judge to amend restitution orders, as specified.

- Allows the California Department of Corrections and Rehabilitation to continue to collaborate with local courts to use two-way, audio-video communication capability to amend restitution orders only if the victim is receiving assistance from the California Victims Compensation and Government Claims Board (CVCGCB).

- Requires that a personal representative or estate attorney notify the CVCGCB when a deceased person leaves money to an heir incarcerated in a state or local correctional facility.

WEAPONS

Lost and Stolen Firearms

Existing law requires the sheriff or police to submit descriptions of serialized property reported stolen, lost, found or recovered directly in the appropriate Department of Justice (DOJ) system. Any firearm included in one of the above categories is placed into the Automated Firearm System (AFS) and a written report is filed to justify the AFS entry.

Some agencies purge their written reports, eliminating the necessary documentation to justify their AFS entries. Once those written reports are purged, the DOJ then purges AFS entries even though the firearms have not been recovered. According to DOJ, in 2003 over 550 firearms were purged from the AFS without being recovered.

AB 86 (Levine), Chapter 167, prevents these firearms from being purged from the AFS database until they are found, recovered, no longer under observation, or the record is determined to have been entered in error. Additionally, this new law:

- Provides that any costs incurred by DOJ shall be reimbursed from funds other than the fees charged and collected from firearms dealers, as specified.

- Makes non-substantive changes by deleting reference to DOJ's Special Services Section, which no longer exists. (The Special Services Section formerly received reports of stolen, non-serialized property that had unique characteristics or inscriptions.)

Assault Weapons

Under current law, where a violation involving the manufacture, possession for sale, importation, transportation and distribution of any assault weapon or .50 BMG (Browning machine gun) rifle involves more than one such weapon, the defendant cannot not be charged with a separate offense for each weapon. Ambiguity in existing statutes identified by the courts needs to be addressed and existing law should clarify that assault weapons and .50 BMG rifles are treated the same as other specified illegal weapons by providing that a separate offense may be charged for each weapon involved.

AB 88 (Koretz), Chapter 690, provides that, excepting a first violation involving no more than two firearms, where a defendant commits an offense involving the manufacture, possession for sale, importation, transportation or distribution, of any assault weapon or .50 BMG rifle, each weapon involved can be the basis of a separately punishable offense.

Harbor and Port Security

California's airports and ports are among the busiest in the nation - one-fifth of United States' international trade passes through the Los Angeles and San Francisco International Airports and through the seaports of Los Angeles, Long Beach, Oakland, and Port Hueneme; the Port of Los Angeles is the nation's busiest container port. However, despite the high traffic at both California's ports and airports, the Daily News of Los Angeles reports that funding for ports is far less in comparison to airport security funding, despite the fact that funding for port security has greatly increased in the past few years. Since the September 11th terror attacks, the Port of Los Angeles has spent more than $6 million for security measures. In June 2003, Homeland Security Secretary Tom Ridge announced that Los Angeles and Long Beach would receive more than $19 million in port security grants. Even with increased funding, the Los Angeles Port Police is the only United States police force dedicated exclusively to port activities.

AB 280 (Oropeza), Chapter 289, applies the same misdemeanor weapons prohibitions and access limitations that currently exist for airports' restricted areas to restricted areas of passenger vessel terminals in harbors and ports. This new law prohibits a person from

knowingly possessing specified weapons and other items within any sterile area of a harbor.

Firearms

Existing law states that in addition to requirements that apply to a local law enforcement agency's duty to report to the Department of Justice (DOJ) the recovery of a firearm, a police or sheriff's department shall, and any other law enforcement agency or agent may, report to DOJ in a manner determined by the Attorney General (AG) in consultation with the Bureau of Alcohol, Tobacco, Firearms and Explosives all available information necessary to identify and trace the history of all recovered firearms illegally possessed, have been used in a crime, or are suspected of having been used in a crime. In addition, any law enforcement agency or agent may report to the AG all information pertaining to any firearm taken into custody except where the firearm has been voluntarily placed with the law enforcement agency for storage.

AB 1060 (Liu), Chapter 715, makes changes to the requirement that law enforcement notify DOJ when it holds a firearm for safekeeping, and prohibits a local sheriff's office from processing the sale or transfer of a firearm. Specifically, this new law:

- Requires local law enforcement to submit descriptions of serialized property which has been, among other things, held for safekeeping directly into DOJ's automated property system for firearms.

- Repeals and makes conforming technical amendments to language that allows a local sheriff's office the right to process purchases, sales or loans, and transfers of firearms when neither the buyer nor seller is a licensed firearms dealer.

- Requires firearms dealers to keep all inventory firearms in secured storage at the firearms dealer's licensed premises.

- Requires security guard companies to report to DOJ transfers of firearms to company employees and allows DOJ to collect fees to process the reports of gun transfers in security guard companies.

- States that any law enforcement agency, including state agencies such as DOJ and the California Highway Patrol, may sell a firearm for a person unable to pass a background check after the person is taken into custody; irrespective of the five-day return rule in domestic violence cases, the firearm owner must still pass a background check.

- Clarifies that requiring a firearms dealer to keep all inventory firearms in secured storage at the firearms dealer's licensed premises does not apply when the dealer is legally conducting business off the premises at gun shows and other authorized locations.

- Authorizes attorney's fees to the prevailing party in a civil suit brought over the return of firearms by law enforcement.

Firearms: Theft

Existing law states that for purposes of specified prohibitions on selling and possessing ammunition, "ammunition" includes, but is not be limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence.

SB 48 (Scott), Chapter 681, deletes "knowing" from the statute relating to the sale of ammunition to persons under the age of majority (18 years of age) and instead inserts a requirement of "reasonable" as a modifier to the existing defense for prohibited sales based on "reliance" on "bona fide evidence of majority and identity". This new law also allows ammunition vendors to sell ammunition or reloaded ammunition that can be used in both a rifle and a handgun to persons at least 18 years of age but less than 21 years of age if the vendor reasonably believes the ammunition is being acquired for use in a rifle and not a handgun.

Firearms: Testing

Existing law provides that a certified testing laboratory shall, at the manufacturer's or importer's expense, test a firearm and submit a copy of the final test report directly to the Department of Justice (DOJ) along with a prototype of the weapon to be retained by the DOJ. DOJ shall notify the manufacturer or importer of its receipt of the final test report and DOJ's determination as to whether the firearm tested may be sold in California.

SB 269 (Dutton), Chapter 683, exempts from unsafe handgun testing, as specified, single-shot pistols with a barrel length of not less than six inches and having an overall length of not more than 10 inches when the handle, frame, or receiver and barrel are assembled.

MISCELLANEOUS

Medi-Cal Coverage for Registered Sex Offenders

Numerous press accounts in the spring of 2005 reported that registered sex offenders in at least 14 states received Medicaid-paid prescriptions for Viagra and other prescription drugs used to treat erectile dysfunction. In response to these and other reports, on May 23, 2005, the Center for Medicaid and State Operations issued a "guidance to remind states there are a number of options to prevent the inappropriate use of such drugs and to inform states that we believe they should restrict the coverage of such drugs in the case of individuals convicted of a sex offense." On May 26, 2005, Governor Schwarzenegger announced that he had issued a directive to all applicable state agencies in California to immediately stop providing known sex offenders with taxpayer-funded medications, such as Viagra, Levitra or Cialis, to treat erectile dysfunction. It is

estimated that 137 registered sex offenders in California may have been prescribed erectile dysfunction drugs under Medi-Cal in the last year.

> **AB 522 (Plescia), Chapter 469,** ensures limited access to automated drug delivery systems in skilled nursing facilities and intermediate care facilities and prohibits access to prescription drugs for erectile dysfunction under the Medi-Cal program by a registered sex offender.

Criminal Procedure: Preliminary Hearing Testimony

Existing law authorizes a finding of probable cause to be based in whole or in part upon the sworn testimony of a law enforcement officer relating to statements of declarants made out of court offered for the truth of the matter asserted.

> **AB 557 (Karnette), Chapter 18,** extends that authorization to testify at a preliminary hearing to include an honorably retired peace officer as long as that officer is relating statements made when he or she was an active officer.

Criminal Investigations

Under existing law, a city, county or superior court is entitled to reimbursement for reasonable and necessary costs connected with state prisons or prisoners in connection with any crime committed at a state prison, whether by a prisoner, employee, or other person, including any crime committed by the prisoner while detained in local facilities pursuant to an agreement with the city or county. Such costs include costs of the prosecuting attorney and public defender or court-appointed attorney in investigating and prosecuting cases related to crimes by a state prison inmate.

> **AB 663 (La Suer), Chapter 54,** reimburses cities or counties for costs incurred for providing training in the investigation or prosecution of crimes by state prison inmates.

Arrested Parents of Minor Children

Families, law enforcement, local governments, and community-based organizations must work together to ensure that minor children are provided for when a custodial parent is arrested or incarcerated.

> **AB 760 (Nava), Chapter 635**, requires that if, during the booking process, an arrested person is identified as a custodial parent with responsibility for a minor child, the arrested person shall be given two additional phone calls for the purpose of arranging for the care of the minor child or children, as specified.

Identity Theft: Asset Forfeiture

Existing law specifies various offenses for purposes of defining "criminal profiteering activity" and "patterns of criminal profiteering activity", and provides for the forfeiture of specified assets for persons who engage in listed offenses.

AB 988 (Bogh), Chapter 53, expands the list of offenses that may constitute a pattern of criminal profiteering activity and providing for asset forfeiture to include the theft of personal information for the purposes of committing fraud.

Sexual Assault Medical Examinations

Existing law requires health practitioners, as defined, who provide medical services to certain persons to immediately make a report to a local law enforcement agency that contains certain personal and medical information, including persons suffering from an injury inflicted by a firearm, and persons suffering from an injury inflicted as the result of assaultive or abusive conduct.

AB 998 (Chu), Chapter 133, requires a health practitioner to make a report to law enforcement upon providing medical services to a person in the custody of law enforcement when sought in the course of a sexual assault investigation. Specifically, this new law:

- Authorizes any health practitioner employed in any health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, performs a forensic medical examination on any person in the custody of law enforcement from whom evidence is sought in connection with the commission and investigation of a crime of sexual assault, as specified, prepare a written report on a standard form and immediately provide the report or a copy of the report to the law enforcement agency who has custody of the individual examined.

- Provides that no health practitioner shall be required to perform forensic medical examinations as part of his or her duties unless he or she is part of an agency that specifically contracts with law enforcement to perform certain duties.

- States the examination and report is subject to confidentiality requirements of the Medical Information Act.

- States the report shall be released upon request, oral or written, to any person or agency involved in any related investigation and prosecution of a criminal case including, but not limited to, a law enforcement officer, district attorney, city attorney, crime laboratory, county licensing agency, and coroner. The report may be released to defense counsel or another third party only through discovery of documents in the possession of a prosecuting agency or following the issuance of a

lawful court order authorizing the release of the report.

- Provides that a health practitioner who makes this report will not incur civil or criminal liability.

- States that refusal to comply will not be considered failure to report and not subject to criminal penalty.

Wiretaps

Existing law defines "wire communication" as any transfer of the human voice made with the aid of specified connections between the point of origin and point of reception, furnished by specified persons or facilities. That definition also includes the electronic storage of these communications.

AB 1305 (Runner), Chapter 17, deletes the electronic storage of these communications from the definition of "wire communication".

Narcotic Treatment Programs

The lack of consensus regarding charges, documentation and audit requirements for indigent non-Medi-Cal eligible patients has led to needless confusion for both the industry and state government.

AB 1349 (Goldberg), Chapter 616, provides guidelines for developing sliding fee scales for indigent clients receiving narcotic treatment but are ineligible for Medi-Cal.

Criminal Information Search

Existing law states that the Attorney General shall furnish state summary criminal history information to any of the following if needed in the course of their duties provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, as specified.

AB 1517 (Runner), Chapter 339, authorizes the Department of Managed Health Care (DMHC) to require fingerprint images and associates information from an employee, prospective employee, contractors, subcontractors and employees of contractors whose duties include or would include access to confidential information including, but not limited to, social security numbers, medical information and any other information that is protected by state or federal law if that person's duties include access to medical information. Specifically, this new law:

- States that the fingerprint images and associated information of an employee or prospective employee of DMHC whose duties include or would include employees or prospective employees, or any person who assumes those duties, may be furnished to

the Department of Justice (DOJ) for the purpose of obtaining information as to the existence and nature of a record of state or federal level convictions and state or federal level arrests for which the DOJ establishes that the applicant was released on bail or on his or her own recognizance pending trial. Requests for federal level criminal offender record information received by DOJ pursuant to this new law shall be forwarded to the Federal Bureau of Investigation by DOJ.

- Provides that DOJ shall provide criminal information backgrounds to the DMHC pursuant to DOJ's authority under existing law.

- States that the DMHC shall request subsequent arrest notification from the DOJ as provided by law for all employees, prospective employees and those who assume those duties.

- Provides that the DOJ may assess a fee to process these requests, as required by law, and that this new law does not apply to individuals appointed to the DMHC prior to January 1, 2006.

- Allows the DMHC to investigate the criminal history of a person applying for employment in order to make a final determination of that person's fitness to perform duties, as specified, but the DMHC may only investigate the criminal history for crimes involving moral turpitude.

- Requires that any services contract or interagency agreement that may include review of medical records for compliance with the Knox-Keene Health Care Service Plan Act of 1975 and entered into after January 1, 2006 include a provision requiring the contractor to agree to permit DMHC to request criminal background checks on its employees, contractors, or subcontractors who will have access to this information.

Public Officials: Personal Information

Prompted by several incidents involving threats to judges, AB 2238 (Dickerson), Chapter 621, Statutes of 2002, prohibited the intentional posting of home addresses or telephone numbers of elected or appointed officials with the intent to cause imminent great bodily injury, as well as publishing residence addresses of law enforcement officers in retaliation for the due administration of the law. AB 2238 also created the Public Safety Officials' Home Protection Act Advisory Task Force, chaired by the Attorney General and comprised of representatives of public safety entities, the judiciary, state and local government, and the real estate and business community.

AB 1595 (Evans), Chapter 343, allows for specified elected or appointed officials to obtain an injunction against any person or entity that publicly posts on the Internet the home address or telephone number of that official, and allows for damages if this disclosure was made with intent to cause bodily harm. Specifically, this new law:

- Provides that any elected or appointed official whose home address or telephone number is made public on the Internet after the official has made a written demand that the information not be made public may bring a lawsuit against the person, business or association responsible and may be granted injunctive or declaratory relief as well as fees and costs.

- Provides that any person, business or association that solicits, sells, or trades on the Internet the home address or telephone number of specified elected or appointed officials with the intent to cause imminent great bodily harm to the official or any resident of the official's home address shall be liable for civil damages of up to three times the actual damages but in no case less than $4,000.

- Provides that a written demand made by any qualifying public official not to publicly post his or her home address or telephone number shall be effective for four years regardless of whether or not the official's term has expired prior to the end of the four-year period.

- Provides that the written demand not to publicly post his or her home address or telephone number when made by a state constitutional officer, a mayor, or a member of the Legislature, a city council or a board of supervisors shall include a statement describing a threat or fear for the safety of that official or a resident of that official's home address.

- Exempts from liability for this violation an interactive computer service or access software provider, as defined, unless the service or provider intends to aid and abet or cause imminent great bodily harm that is likely to occur or threatens to cause imminent great bodily harm to an elected or appointed official.

Gambling: Penalties

Existing law states that every person who participates or plays the game of "three-card monte" or any other game, device, sleight of hand, pretensions to fortune telling, trick, or other means whatever, by use of cards or other implements or instruments, or while betting on sides or hands of any play or game, fraudulently obtains from another person money or property of any description, shall be punished as in case of larceny of property of like value.

AB 1753 (Governmental Organization), Chapter 546, increases penalties for those convicted of engaging in unlawful gambling activities and changes certain provisions regulating the business of gambling. Specifically, this new law:

- Deletes the requirement to be a California citizen in order to obtain key employee status.

- Provides minor changes to provisions dealing with the authority of licensed gambling establishments to enter into contracts with third parties for proposition player

services.

- Allows the transportation and possession of slot machines if used as a prop for movies or television, as specified.

- States that every person convicted of participating or playing games such as three-card monte, or any other game, device, sleight of hand, pretensions to fortune telling, trick or other means, and fraudulently obtains from another person money or property:

  - A first offense is punishable by imprisonment in a county jail for a period of not more than one year or by a fine of not more than $5,000.

  - A second offense is punishable by imprisonment in a county jail for a period of not more than one year or by a fine of not more than $10,000.

- States that every person who operates a bookmaking scheme or pool-making operation is punishable as follows:

  - A first offense is punishable by up to one year in the county jail; by a fine of not more than $10,000; or by both imprisonment and fine.

  - A second offense is punishable up to one year in the county jail or in state prison; by fine of not more than $10,000; or by both imprisonment and fine.

  - Two or more offenses are punishable by up to one year in the county jail or in state prison; a fine of not more than $15,000; or by both imprisonment and fine.

- States that any person who gives, offers to give, promises to give, or attempts to give any money, bribe or thing of value to any person, as specified, is guilty of a felony, punishable by imprisonment in state prison; by a fine of not more than $10,000; or by both imprisonment and fine. A second offense is a felony, punishable by imprisonment in the state prison; by fine not more than $15,000; or by both imprisonment and fine.

- States that any person who violates the law, as specified, or conspires to violate the law, as specified, shall be punished by imprisonment in a county jail for a period of not more than one year; by fine of not more than $10,000; or by both imprisonment and fine. A second offense is punishable by imprisonment in a county jail for a period of not more than one year or in the state prison; by fine of not more than $10,000; or by both imprisonment and fine.

- States that the sentence for violation of relevant gambling laws by imprisonment in the county jail for a period not more than one year; by a fine of more than $10,000; or both. A second offense is punishable by imprisonment in the county jail for not more than one year or by fine of not more than $15,000.

Peace Officers: Public Health Emergencies

Existing law authorizes county health officers to take any preventive measure necessary to protect and preserve the public health from any public health hazard during any "state of war emergency," "state of emergency," or "local emergency" and, upon consent of the county board of supervisors or a city governing body, to certify any public health hazard resulting from any disaster condition if certification is required for any federal or state disaster relief program. Should it be necessary for health officers to enlist the assistance of law enforcement agencies, peace officers need the authority to enforce the orders of state and local health departments.

SB 104 (Ortiz), Chapter 478, permits a peace officer to enforce a Department of Health Services (DHS) or local health department order to prevent the spread of contagious disease. Specifically, this new law:

- Provides that the sheriff may execute all orders of the local health officer issued to prevent the spread of any contagious or communicable disease.

- Provides that the chief of police has the same powers as the sheriff to execute all orders of the local health officer issued to prevent the spread of any contagious, infectious, or communicable disease.

- Provides that a peace officer may enforce an order of the DHS or local health officer within his or her jurisdiction. This new law provides that in issuing these orders, the health officer may consider whether it is necessary to advise the enforcement agency of the measures to prevent infection to an enforcement officer.

Child Abandonment: Newborns

Each year, newborn infants are abandoned or discarded, resulting in death. As a result, in 2000, the Legislature enacted a "safely surrendered baby" law which protects a parent or other person having lawful custody of a child 72 hours old or younger who voluntarily surrenders physical custody of the child to personnel on duty at a safe surrender site from prosecution under the state's child abandonment laws.

When a newborn baby is surrendered under the "safely surrendered baby" law, the county child welfare services agency assumes temporary custody of the newborn upon being notified; immediately conducts an investigation; and, within no more than 24 hours, reports all known identifying information concerning the child (except personal identifying information pertaining to the parent or person who surrendered the baby) to the California Missing Children Clearinghouse and to the National Crime Information Center. If the child is not reclaimed by the parent or guardian who abandoned the newborn, the child protective services agency takes custody of the child and files a petition in juvenile court to have the child declared a dependent of the court.

The parent or custodian who safely surrendered the newborn may reclaim the baby within 14 days of the date of surrender under specified conditions. If the newborn is still at the safe surrender site, the site may return the newborn to the parent or custodian claiming the baby or contact a child protective agency if there is a reasonable suspicion that the newborn has been the victim of child abuse or neglect.

This safely surrendered baby law is scheduled to expire on January 1, 2006.

> **SB 116 (Dutton), Chapter 625,** makes permanent the "Safely Surrendered Baby Law" under which a parent or other person with lawful custody of a baby 72 hours old or younger who surrenders the baby to a county-designated safe surrender site may not be prosecuted for child abandonment.

Human Trafficking: Task Force and Peace Officer Training

A victim of human trafficking is any person being manipulated or forced to work against his or her will or provide services for the benefit of another person.

By virtue of its large manufacturing and service-sector industries, global and economic strength, and large immigrant population, California is a major destination for human trafficking. Public awareness of human trafficking, while still relatively modest, has increased in the past decade. A handful of community-based organizations across California now provide services to victims and law enforcement is beginning to address the issue.

Local jurisdictions have only recently begun to address human trafficking. Local task forces have been created in the City of Los Angeles, the County of San Diego, and the San Francisco Bay Area with United States Department of Justice Grants. In addition, a task force has been created in Orange County with local resources. These local task forces bring law enforcement and victim social service providers together to identify human trafficking victims and bring perpetrators to justice. Currently, no state efforts exist to combat human trafficking and provide services to victims.

A statewide response to human trafficking should be established and training opportunities on human trafficking for peace officers should be provided.

> **SB 180 (Kuehl), Chapter 239,** establishes the California Alliance to Combat Trafficking and Slavery task force (California ACTS) and requires development of a course of instruction for the training of law enforcement officers in California in responding to human trafficking. Specifically, new law:
>
> - Establishes California ACTS to collect data on human trafficking in California, study and make recommendations to strengthen state and local efforts to prevent trafficking, to protect and assist victims of trafficking, and prosecute traffickers. This new law requires California ACTS to report its findings and recommendations to the Governor, the Attorney General, and the Legislature on or before July 1, 2007.

- Requires the California Commission on Peace Officer Standards and Training (POST) to implement by January 1, 2007 a course or courses of instruction for the training of law enforcement officers in California in investigating human trafficking complaints and to develop guidelines for law enforcement response to human trafficking.

- Provides that provisions of this new law creating the task force are repealed as of January 1, 2008 unless a later statute extends that date.

Firearms: Testing

Existing law provides that a certified testing laboratory shall, at the manufacturer's or importer's expense, test a firearm and submit a copy of the final test report directly to the Department of Justice (DOJ) along with a prototype of the weapon to be retained by the DOJ. DOJ shall notify the manufacturer or importer of its receipt of the final test report and DOJ's determination as to whether the firearm tested may be sold in California.

SB 269 (Dutton), Chapter 683, exempts from unsafe handgun testing, as specified, single-shot pistols with a barrel length of not less than six inches and having an overall length of not more than 10 inches when the handle, frame, or receiver and barrel are assembled.

Rural Crime Prevention Program

The Counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare are authorized to develop and implement a Central Valley Rural Crime Prevention Program until January 1, 2005. The program is administered by the district attorney's office of each respective county under a joint powers agreement with the corresponding county sheriff's office.

SB 453 (Poochigian), Chapter 497, Extends the operative date on the Central Valley Rural Crime Prevention Program until January 1, 2010.

Juveniles: Mental Competency

Existing law requires the Judicial Council to perform various duties designed to assist the judiciary. Existing law establishes various criteria for evaluating whether a minor is seriously emotionally disturbed or has a developmental disability.

SB 570 (Migden), Chapter 265, requires the Judicial Council, to the extent resources are available, to provide education on mental health and developmental disability issues affecting juveniles in delinquency proceedings to judicial officers and other public officers and entities. Specifically, this new law:

- Makes several findings and declarations regarding the need for mental competency evaluation in the juvenile justice system.

- Requires Judicial Council, to the extent resources are available, to provide education to judges on mental health and developmental disabilities issues affecting juveniles.

- States that if a minor is determined to have a serious mental disorder, is seriously emotionally disturbed, or has a developmental disability, the court may order that the minor be referred for evaluation, but the minor, upon advice of counsel, may decline the referral.

- Requires that the licensed mental health professional performing the evaluation meet the following criteria:

    - Is licensed to practice medicine in California and is trained and actively engaged in the practice of psychiatry; and,

    - Is a licensed as a psychologist, as defined by law.

- Provides that the evaluator shall personally examine the minor, conduct the appropriate examination, and present a written report to the court documenting his or her findings. If the minor is detained, the examination shall occur within three days of the court order and the evaluator's report shall be presented no more than five days after the examination unless good cause is shown.

- States that if the court determines that the juvenile is seriously emotionally disturbed or developmentally disabled, the minor shall be referred in accordance with existing law.

- States that prior to the preparation of a social study required under existing law, the minor shall be referred to a multidisciplinary team for dispositional review and recommendation. The multidisciplinary team shall consist of qualified persons who are collectively able to evaluate the minor's full rage of treatment needs. The multidisciplinary team must include one licensed mental health professional.

- States that the multidisciplinary team shall review the nature and circumstances of the case including family circumstances and the minor's tests and relevant evaluation results.

- States that the court shall review the treatment plan and the dispositional recommendations prepared by the multidisciplinary team and shall take them into account when making the dispositional order in the case. The dispositional order in the case shall be consistent with the protection of the public and the primary treatment needs of the minor as identified in the report of the team. The disposition order shall incorporate the treatment program to the extent feasible.

- Provides that the dispositional in the case shall authorize placement of the minor in the least restrictive setting consistent with the protection of the public and the minor's treatment needs. The court shall give preferential consideration to the return of the

minor to the home.

- States that "regional centers", as described, shall not be required to provide assessments or services to minors pursuant to this new law. Regional center representatives may, at their option and on a case-by-case basis, participate in the multidisciplinary teams.

- Requires that in order for the provisions of this new law to be applicable in a county, the board of supervisors in that county must adopt a resolution approving this new law. Counties may establish two or all three of the provisions specified in this new law and may implement the policy permanently or on a limited basis.

- Provides that funds from a grant from the Mental Heath Services Act used to fund programs specified in this new law shall only be used for health assessment, treatment, and evaluation.

Home Detention: Electronic Monitoring

Penal Code Section 1203.016, which allows for counties to supervise certain offenders via electronic monitoring or supervising devices, does not specifically mention the use of a global positing system (GPS). At the request of Senator Ashburn, Legislative Counsel wrote an opinion addressing if Penal Code Section 1203.016 permits a county to authorize the use of GPS devices for purposes of home detention compliance programs for specified inmates and low-risk offenders.

Legislative Counsel's November 5, 2004 opinion stated, "Section 1203.016 of the Penal Code permits a county to authorize the use of GPS devices for purposes of home detention compliance programs for specified inmates and low-risk offenders." The opinion went on to say, "The term 'electronic monitoring or supervising devices' is not defined in Section 1203.016 or any other provision of the Penal Code. In our view, a device that transmits, receives, and interprets radio signals is an electronic device. Moreover, certain GPS devices can be used to track the location of a person or vehicle when the device is attached to the person or vehicle and to provide that location to a monitoring station. In our view, a GPS device, given its operation, meets the description of an electronic monitoring or supervising device which could be used to carry out the purposes of Section 1203.016."

SB 963 (Ashburn), Chapter 488, explicitly includes in the existing law pertaining to local home detention programs using "electronic monitoring or supervising devices" the use of "GPS devices and other" supervising devices.

Annual Omnibus Code Revisions

The Senate Public Safety Committee's annual omnibus bill makes technical changes and corrections to various provisions of code.

SB 1107 (Public Safety), Chapter 279, makes a number of technical changes and corrections to specified Penal Code Sections. Specifically, this new law:

- Changes references from "the district attorney" to "the prosecutor".
- Changes references from "clergyman" to "members of the clergy" and corrects a cross-reference.
- Repeals provisions of law related to a public member of a county board of parole commissioners superseded by a later enacted statute.
- Adds Financial Code sections inadvertently omitted from provisions of law authorizing the release of Criminal Offender Record Information to financial institutions.
- Clarifies that a victim's name must only be included on a report of child abuse or neglect if the name is known to the mandated reporter.
- Adds a cross-reference to provisions of law that allow the Department of Justice to charge a fee for access to the Child Abuse Central Index for employment purposes to include applicants for employment as a peace officer.
- Changes references from the "California Institute for Women" to the "Central California Women's Facility".
- Corrects several spelling, grammatical, numbering, chaptering, and cross-referencing errors.

Ben Clark Public Safety Training Center

The Ben Clark Public Safety Training Center was established in 1996 and is the first operational joint public safety training center in California. The Ben Clark Public Safety Training Center has provided advanced training to over 6,000 first responders from federal, state, county, and municipal governments as well as military and specialized personnel. First-responder personnel benefits from convenient access to a fully equipped medical facility, a central location for the staging of interagency drills and public emergency response and training scenarios, advanced training facilities that meet time-critical needs and continuing education requirements, and on-site health professionals and educators. These amenities provide the federal and state government with the unique opportunity to implement training mandates with minimal cost.

SJR 14 (Battin), Chapter 62, urges the President and the Congress of the United States to recognize the Ben Clark Public Safety Training Center, located at March Air Reserve Base in Riverside County, as a leader in homeland security training throughout southern California.